

INTEREST

By

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Translated by

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

TRANSLATOR'S NOTE

When the Markazi Maktaba Islami Publishers - New Delhi offered us the opportunity to translate Maulana Syed Abul A'la Maududi's masterpiece "SOOD" from Urdu into English, we readily accepted the assignment inspite of anticipating the difficulties expected in translating this exceedingly scholarly work. The motivation was to be part of the much required endeavour to popularize the concept of prohibition of interest in Islam and offer an alternative to the conventional usurious system of lending that is the source of the appalling financial crisis we are all suffering from since a long time.

This book contains three appendices besides the main subject matter. The first appendix comprises the correspondence between Maulana Maududi and the ex-Auditor General of the Government of Pakistan - Syed Yaqoob Shah, on the topic of "interest". The second appendix is based on Maulana's answers to questions posed to him about "interest" which he presented in the form of a paper at a symposium in Lahore while the third appendix comprises of two articles by the late Maulana Manazir Ahsan Geelani (who advocates for the permissibility of interest in the context of India) and Maulana Maududi's rebuttal and critique of the same. In the footnotes of the third appendix by Maulana Maududi along with his critique of Maulana Geelani is a wonderful elucidation of the often misunderstood concepts of Dar al Islam (abode of Islam), Dar al Kufr (abode of disbelief) and Dar al Harb (abode

of war). It is thus of vital importance and may help clear a lot of misunderstanding regarding those concepts.

Finally, we wish to place on record that this translation will definitely leave a few ghostly fingerprints of interpretation as the subject matter contained an exhaustive list of cross-references from Arabic books of Hadith and Fiqh (jurisprudence). We would be immensely grateful if the readers would point out mistakes of language, grammar and errors while translating from Urdu / Arabic into the English language.

We wish to thank Professor Fahimuddin for his guidance, Maulana Raziul Islam Nadwi for his unstinted support and Professor Mohammed Rafat for sparing his valuable time for painstakingly supervising the entire project. We are also grateful to our friends and family members who motivated us to complete the task at hand. Finally we wish to place this small service before All-Mighty Allah, Whose Pleasure and Grace alone is sufficient for us to be blessed and rewarded, both in this world and the Hereafter.

Dr. Maaz Amjad and Arshad Shaikh

New Delhi

03rd August , 2015

PREFACE

This book is a collection of my articles which I had written on the topic "Interest" during different periods of time from 1936 to 1960. Earlier, a book of mine by the same name was published in two volumes, but in conditions that did not offer me any chance to organize it in a proper manner, nor rectify the arrangement. Hence even if the general readers did get some useful information from the book, it was in a scattered form. Now, I have arranged it, afresh, in two separate books. Of these, one book by the name "Islam and Modern Economic Theories" has been in publication since a while. This second book "Interest" comprises all those articles which I have written thus far related to this topic. Hopefully, this book in its new form would benefit those who want to understand this subject.

Three appendices are also included at the end of the book. One appendix comprises of the correspondence between me and the ex-Auditor General of the Government of Pakistan - Mr. Syed Yaqoob Shah. It contains all the arguments and supporting facts put forth by those who, by differentiating between personal and commercial loans, wish to limit the law of prohibition of interest only to personal loans. I have given my response by way of reasoning and evidence to support my argument. Readers can now judge how far it is reasonable and correct to hold interest being lawful for commercial loans.

The second appendix is based on my paper that I presented on the topic 'Interest' in a symposium organized by '*Idara-Saqafat-e-Islamia*' Lahore. In this appendix, a comprehensive

discussion covering almost all the important aspects regarding the issue in question will be presented to the readers.

The third appendix comprises of two articles by the late Maulana Manazir Ahsan Geelani and a response to them from my side. The topic of discussion is the correct interpretation of the legality of interest in *Dar al-Harb* (territory of war) as per the *Hanafi* School of Law. Nevertheless, many important topics about the constitutional and international law of Islam have also been touched which besides economics, will *Insha-Allah* also prove useful to those who are interested in studying the legal aspect of Islam.

Abul A'la

Lahore,
23rd July 1960

INTRODUCTION

The fundamental reason behind the inability to understand the injunctions of the Islamic law pertaining to interest is that the economic system which was established by Islam stands in complete disarray today. Its principles and theories have been obliterated from our hearts. Today we find that a (new) system based on the principles of Capitalism has totally overwhelmed and overshadowed us and the world we live in. Not only has this capitalist economic system practically engulfed our lives but its principles and theories have also managed to win our hearts and minds. Hence whenever we analyze any economic issue, our viewpoint is generally the same as expounded by Capitalism. Our research and inquiry usually tends to begin in such manner, that we first agree with the Capitalist principles and theories of economics (on a particular economic issue) and only after that do we look at what other economic theories say (about the particular issue). But if we exercise a little reason and understanding, then it would not escape us that this method of inquiry is fundamentally wrong and flawed.

The Islamic economic system is totally different from that of the capitalist economic system both in theory and principle. The objective, the methodology and the spirit of Capitalism is completely different (from that of Islam). Now for any given issue, if we accept the principles and theories of Capitalism and then look the economic injunctions of Islam through the prism of those capitalist theories, then certainly all those Islamic rules and regulations would either appear to be totally incorrect or they would have to be modified in such a way that they would then be totally removed from the principles of Islamic Law and would be molded in the nature of Capitalism, thus destroying their Islamic spirit and preventing the

realization of the aims and objectives of Islamic law. As a matter of fact, in essence, it would not even remain an Islamic injunction. This precisely is the basic mistake, due to which our economists have been faltering over understanding the Islamic injunctions and comprehending its objectives and exigencies. They have no idea about the principles on which the economic system of Islam is established. What are its objectives? What is its spirit? Why has Islam forbidden interest? What is the motive behind the prohibition of interest-based-transactions? And what disgusting ugliness would be created if these interest based transactions were encouraged? Being unaware of these fundamentals, when they look at the Islamic injunctions concerning interest with an entirely capitalist viewpoint, then they cannot find any evidence regarding the prohibition of interest. Interest is the lifeline of Capitalism and it's all pervading spirit. Without it, capitalist business would cease to exist. And it is impossible for an economic system to be free from interest whose edifice is built on the principles of Capitalism. But the problem is that these gentlemen, after deviating from Islam, intellectually and in practice continue to remain its adherents by tradition and dogma and do not want to opt out of its fold intentionally. Hence although the bindings of dogma force them to accept the prohibition of interest, their knowledge and actions compel them to break the chains of the Islamic injunctions in so far as interest is concerned. This tussle between the heart and mind is going on for quite a while and an easy form of exigency is now being innovated that the Islamic injunctions be interpreted in such a way that the 'interest' (that is prohibited by Islam) becomes a 'non-designated' term (which is no longer in practice in the contemporary financial world) and may thus remain prohibited formally but all its other manifestations found in the (contemporary) capitalist system be made lawful. Usury (interest charged by moneylenders) was the only thing which was opposed by the capitalist system. Yet even then, they could not find any reason to completely prohibit this form

of interest. In their view, usury only needs to be modified (and made more humane), and by this they mean that the interest rate should not be so exorbitant that it becomes impossible to pay it back with the amount to be repaid increasing to a multiple of the borrowed principal itself.

This is a deception in which these gentlemen have fallen prey to without giving any thought or understanding. A wise man will desist from the temptation of sailing in two boats simultaneously moving in opposite directions. Even if he dared doing so unknowingly, prudence demands that as soon as he realizes his mistake, he should choose only one of them and immediately lift and pull away from the other. The discussion regarding interest being lawful or prohibited and the determination of the extent of its prohibition is something which comes quite later.

First of all, it is important that you clearly understand the difference between the Islamic economic system and the capitalist economic system, both in letter and spirit. And by contemplating over the injunctions of Quran and Hadith one must become aware of the principles and basis on which Islam has established a balanced economic system quite different from Capitalism and Communism. By doing this research, you will automatically understand that Islam leaves absolutely no room for interest in its system of managing economic transactions and it also absolutely negates the world-view, the mentality and the state of affairs because of which different types and manifestations of interest-based transactions come into existence. After this, it becomes inevitable for you to choose any one of the two ways.

One way is that you reject the economic principles of Islam and believe in the principles of the capitalist system. In this way you would be spared the trouble of making any modifications in the principles and injunctions of Islam. In fact the straight and clear path for you would be to renounce Islam.

The other way for you would be to consider the economic principles of Islam to be correct and you acknowledge after due deliberation and reflection that all types of interest are prohibited in Islam. But being surrounded by the capitalist economic system, you find it hard to protect yourself from this prohibition. In this scenario, if you want to devour interest and make others do the same then you may very well do so, for, you have every freedom to commit any type of sin. But as a Muslim you will definitely not have the courage to devour interest and feed others by declaring it to be lawful for yourself and try to clear your conscience from its guilt and try to purify the thing which Allah and His Messenger (pbuh) have declared impure. A person has a right to openly renounce the law of Islam and agree to follow other laws even to the extent that he accepts the authority of the Islamic law and yet chooses or is forced to lead a life of a sinner in unfavourable conditions. But under no circumstances does he have the right to alter and substitute the Islamic law with any other law he wishes and then claim it to be the only real Islamic law.

After this introduction, we shall now present these discussions in detail as indicated.

THE FUNDAMENTAL DIFFERENCE BETWEEN ISLAM, CAPITALISM AND COMMUNISM

Before we proceed, you should know in brief, the fundamental difference between the various economic systems of the world. What changes have occurred in the way financial and economic transactions are conducted because of this difference?

Without getting into these differences in detail, we can divide the economic systems of the world into three major categories. First one is known as "Capitalism", the second as "Communism" and the third economic system is the one presented by Islam.

In this chapter, a summary of the principles of these three systems will be presented.

Capitalism

In simple and straight words, the ideology on which the foundation of the capitalist system is established is that every person is the sole owner of the wealth he has earned. No one else has a right in that earning. He has every right to spend his wealth in whichever manner he likes, to hoard up any amount of wealth-creating-resources and to refuse to spend for himself if no profit is gained from it. This ideology develops from selfishness which is inherent in human nature and ultimately reaches such an extreme level that it suppresses all those qualities of man which are necessary for the existence, welfare and prosperity of human society. Even if one completely disregards the moral point of view and looks at it from a purely

economic viewpoint, then the logical outcome of this ideology would be:

- (i) Destruction of the balance of distribution of wealth
- (ii) Gradual accumulation of the wealth-creating resources in the hands of one lucky individual or a class of more clever people.
- (iii) The division of society into practically just two classes: the rich class and the poor class. The rich class also being the ruling class dominates all the wealth-creating resources, exploits the poor class for personal gain and in its avarice to increase wealth as much as possible; it squeezes and consumes the common benefit of the society in every possible way. As for the poor class, being poor, find no opportunity to have a share in the wealth-creating resources, but of course earn their livelihood by mere serving as much as possible, the interests of the capitalists. Obviously this kind of economic system creates financiers, industrialists and landlords on one hand and debtors, labourers and peasants on the other. The very nature of such a system necessitates that the society be bereft of the spirit of sympathy and cooperation. Everyone is forced to lead life with their own personal resources. No one is expected to lend a helping hand to another. A very narrow and restricted portion of the economy is open for the poor and the needy. Every member of society is involved in fierce competition for his own survival and pitted against his fellow member. People work untiringly to control as much wealth-creating resources as possible, hoard them for their personal gain and utilize them for self-aggrandizement. And if those who failed to participate in this competition or have no strength and energy to do so, may find no support for them in this world. Even if they are forced to beg, they may not get along easily. They may not find mercy for themselves in anybody's heart. No helping hand is extended to them. They either commit suicide and hence salvage themselves from the punishment

of life or earn their livelihood by resorting to crimes and taking dirty shameless jobs. This system forces people towards hoarding wealth, self-aggrandizement and spending only for the purpose of making profit. Towards this end, banks, financial institutions, provident funds, insurance companies and cooperative societies are established. And only one spirit pervades all these various economic strategies: create more money out of money. Be it through business transactions or interest. According to the capitalist point of view, there is no difference between interest and trade. In the capitalist system, not only do interest and business blend with each other, but rather they become the very fabric of the business infrastructure. For the capitalists, interest and trade are equivalent to each other. One cannot prosper without the other. Without interest, the entire capitalist system will collapse.

Communism

There is another economic system that is exactly opposite to that of Capitalism and is called the communist system. It is based on the ideology that all the wealth-creating resources belong to the society at large and hence individuals have no right to own them privately. These resources cannot be acquired by them, cannot be spent by them and as individuals they do not have the sole right to enjoy its benefits. Individuals would receive only as much remuneration for which they worked towards the realization of society's common interests. Society would provide them remuneration for their basic necessities of life and they would have to work for society in return.

This ideology manages the economy in a manner that is fundamentally different from the capitalist system. In this system; personal ownership does not exist at all and hence there is no possibility for anyone to accumulate wealth and invest it in business as an individual. Since the communist

system differs in ideology and principles, consequently its methodology too is different. The workshop of Capitalism cannot run without banking, insurance, joint-stock companies and other such institutions. But in the communist system and in their way of conducting economic transactions, there is neither room nor necessity of these (capitalist) institutions. As deep a connection is found between the nature of Capitalism and interest, so is found a strong dissimilarity between the nature of Communism and interest. Communism demolishes the very foundation on the basis of which a person deals with interest. Communist principles do not allow interest in any form or capacity. And it is not possible for anyone who believes in these principles to remain a communist and also carry on with interest-based transactions at the same time¹.

Communism and Capitalism stand poles apart. Capitalism definitely guarantees people's fundamental rights, but nothing can be found in its principles and ideology that mobilizes people to serve the common interest of society and inspire them to do so when the occasion arises. As a matter of fact, it develops a selfish mentality in the people due to which every person works against the society to safeguard his or her own personal interest. Thus the equilibrium of wealth distribution is totally ruined. On the one hand a few lucky individuals seize the wealth creating resources of the entire society and become millionaires and billionaires and with their money-power amass as much wealth as possible. And on the other hand, the condition of the majority moves from bad to worse and their share in wealth distribution keeps on reducing until it reaches zero. Initially, the capitalist's wealth with its fabulous displays

¹ Please bear in mind that here we are discussing purely about ideology, otherwise Communism in Russia underwent many ups and downs and having failed to implement its extremist ideology, it is now adopting various capitalistic approaches. It is therefore now possible for those who receive remuneration in excess of their needs to save it in the bank and enjoy interest over their deposits.

creates a deceptive scintillation in civilization, but the end result of this unequal distribution of wealth is metaphorically nothing more than the frozen blood supply within the body of the global economy. Most parts of the body dry up and die for want of blood. And the excessive accumulation of blood destroys the vital organs of the body.

Communism wants to cure this disease. But it chooses the wrong way for the right purpose. Its objective is to establish equilibrium in the distribution of wealth, and undoubtedly, it is a just objective. But for this purpose it chooses a way which is actually against human nature. Prohibiting people from owning private property and making them slaves of society is not only destructive to the economy but on a much wider scale is also fatal to man's entire social life, because it kills the very spirit that pervades civilization and the force that drives the economy. In economic terms the only thing that motivates people is to work hard for their own personal gain and material benefits.² It is human selfishness that is both natural and inherent and something that cannot be removed through the application of logic and reasoning from a person's heart and mind. With the exception of some extraordinary people an average person could and would utilize his full energy of his mind, body and spirit only for those tasks which interests him most. If this interest and incentive do not exist and he realizes that he would not benefit materially through his efforts and endeavors beyond a certain fixed amount, then his mental faculties would slowly become retarded and physical abilities

² Ideologically, Communism had rejected this reality in the beginning. In fact its extremist philosophers have even claimed that man doesn't have any inborn inclination; everything is a product of the environment. And through education and training we could nurture a "Social Mindedness" free from such selfish inclinations. But experience has at last proved this misconception of Communism to be wrong. Now in Russia, ever new strategies are being adopted to motivate the workers for action, appealing to their instinct of personal gain and benefit.

stunted. He would lose all motivation to work hard and merely act as a beast of burden whose only concern lay in getting his wages on time for his daily sustenance.

This is the internal aspect of the communist system. Its external and functional characteristic is that by eliminating all the capitalists, it actually brings about a very big capitalist into existence which is nothing but the communist regime. This big capitalist is devoid of even the bare minimum of the noble emotions that can be found in (regular) capitalists. Like a machine, it takes services from the people and like a despot, distributes means of livelihood among them. He has neither sympathy nor appreciation and acknowledgement. He doesn't treat people as human beings but rather as nuts and bolts and snatches away their freedom of thought and action. Without this extreme autocracy, neither could the communist system be established nor sustained. As the nature and temperament of people would invariably be inclined towards rebelling against the communist system, they would have to be controlled with an iron fist of constant tyranny lest they destroy the communist system in no time. This is the precise reason that Russia's Soviet government is the most despotic and oppressive of all the governments in the world today. It has trapped its subjects in harsh iron shackles which are not to be found amongst any of the regimes of the world – be they authoritarian or democratic. Its oppression and tyranny is not because coincidence and chance have produced dictators like Stalin, but rather the very nature of Communism necessitates the most extreme form of dictatorship.

Islamic economic system

Islam establishes a balance between these two diametrically opposite systems. The most fundamental principle of Islam is that the individual is granted all personal and natural rights (of creating and owning wealth) even as the equilibrium of wealth distribution is maintained rigorously. On

the one hand, it bestows on the individual, the right of personal property and personal ownership and also the right to utilize his personal wealth. On the other hand, it imposes on all these rights many such moral obligations internally and legal bindings externally, that are aimed at preventing the accumulation of wealth-creating resources at any single point in the social structure. Wealth must always remain in circulation, and it should be such that every person of society receives his due share. For this purpose, it has organized the economy in a way that is fundamentally different in its spirit, principles and methodology from both Capitalism and Communism. In brief, the economic theory of Islam is that there is a strong connection between every individual's personal benefit and the collective benefit of all the individuals (or society at large). That is why instead of rivalry and conflict, there should be conformity and cooperation.

If an individual keeps only his personal benefit into consideration while earning and spending wealth, as opposed to the collective benefit of society then that would not only be detrimental to society at large but eventually the individual himself would have to suffer losses. Similarly, if the social system sacrifices the personal benefit of the individual for the sake of collective benefit, then not only would it be hazardous to the individual but also eventually the society would have to bear its losses. Thus the well-being of society lies in the well-being of the individuals and vice versa. And the welfare of both of them lies in the fact that selfishness and sympathy be established in a proper ratio among the people. Let everyone toil for one's personal benefits but in a way that others are not harmed. Let every person earn as much as he can, but with the belief that others too have a share in it. Let every person benefit from others but do good to others too. Merely producing these moral qualities in the people is not enough in order to continue this kind of distribution of benefits and circulation of wealth. Rather, the law should properly channelize the income and expenditure of wealth. Under this

law, one must not have the right to earn money through harmful means and the wealth that is earned through lawful means, must not be hoarded in one place. Rather, it must be spent and be in constant and maximum circulation.

The objective of this Islamic economic system is based on an ideology that does not make a few people big and super-rich while the rest remain beggars, nor does it prevent anyone from becoming a billionaire. Accepting the natural disparity in income the Islamic economic system does not try to forcefully bring everyone in the same economic bracket. Striking a balance between these two extremes is its sole objective and it wants to create a society that caters to the economic needs of all of its individuals. If every person tries to earn his livelihood without harming others, and by remaining within one's natural limits and takes prudence and mutual cooperation into consideration while spending the money earned, then society would be free from all the frictions and hassles that are found in the capitalist system. Although the Islamic economic system does not stop anyone from becoming rich but it also makes it impossible for the wealth of a billionaire to become the cause of starvation of his own fellow humans. This type of economy definitely wants to reserve a share in the wealth created by Allah but does not consider it lawful to impose artificial limitations so much so that a person is unable to earn money in accordance to his ability and talent.

PILLARS OF THE ISLAMIC ECONOMIC SYSTEM

It requires both ethics and the law to raise the foundations of a system based on the Islamic economic viewpoint that tries to strike a balance between the two extremes of Capitalism and Communism. Islam prepares every individual for voluntary obedience of its system through moral education and uses the power of law to impose certain obligations that would compel them to abide by the system and prevent them from transgressing the limits.

These moral principles and legal injunctions are the pillars of this economic system and in order to understand its nature, it is necessary to look at it in a detailed manner.

1. The distinction between lawful and unlawful earning

First of all Islam does not grant its followers a license to print money. It makes a distinction between the lawful and unlawful ways of earning. Islam takes the collective benefit of society into consideration. This distinction is based on the Islamic principle that somebody's loss is another's gain then that method of earning is unlawful. For Islam, only those ways are lawful wherein the benefits are equitably exchanged between the concerned persons.

This principle is expressed in the Glorious Quran in the following manner:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِلَا تَأْكِلُو أَمْوَالَ كُمَّ بَيْتَكُمْ بِالْبَاطِلِ إِلَّا أَن تَكُونْ تِجَارَةً
عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

O ye who believe! Eat not up your property among yourselves in vanities: But let there be amongst you traffic

and trade by mutual consent: Nor kill (or destroy) yourselves: for verily Allah hath been to you Most Merciful!
(Surah Nisa: 29)

وَمَنْ يَفْعُلْ ذَلِكَ عُدُواً إِنَّا وَهُنَّا فَسَوْفَ نُصْلِيْهُمْ نَارًا وَكَانَ ذَلِكَ عَلَى اللَّهِ

تَسْبِيرًا

If any do that in rancor and injustice - soon shall We cast them into the Fire: And easy it is for Allah.

(Surah Nisa:30)

In this verse, the word “trade” signifies the mutual transfer of goods and services.

By making it conditional with ‘mutual consent’ all types of exchange are made unlawful that involve any kind of undue pressure, fraud and deception or any ploy which the business partner might not agree with if it comes to his knowledge. For additional emphasis, it is said “you shall not kill yourselves”. This has two meanings and both are meant here. One, that “you do not kill each other” and the second, that “you do not kill yourselves”. It means that the person who causes loss to others for his personal gain is like the one who drinks the blood of other people and in the end destroys his own self. Besides these fundamental injunctions, the various places in the Holy Quran wherein the various types of unlawful earnings are mentioned include:

- | | | |
|---|--|--|
| 1 | Bribery and usurpation | <i>Surah Al-Baqarah
2:188</i> |
| 2 | Misappropriation of both private and public wealth | <i>Surah Al-Baqarah
2:283, Surah Al-e-
Imran 3:161</i> |
| 3 | Stealing | <i>Surah Al -Maidah
5:38</i> |
| 4 | Misappropriation of orphan's money | <i>Surah Al-Nisa 4:10</i> |
| 5 | Dishonestly short weighing and short measuring | <i>Surah Al-Mutaffifeen
83:3</i> |

- | | | |
|----|---|--|
| 6 | Pornography | <i>Surah Al-Noor 24:19</i> |
| 7 | Vulgarity and commercial sex trade | <i>Surah Al-Noor 24:2, 33</i> |
| 8 | Liquor industry, its selling, buying and transportation | <i>Surah Al-Maidah 5:90</i> |
| 9 | Gambling and all those means through which money belonging to people is transferred to a few due to luck and chance | <i>Surah Al-Maidah 5:90</i> |
| 10 | Idol-making, idol-selling and service to temples housing idols | <i>Surah Al-Maidah 5:90</i> |
| 11 | Fortune telling and divination | <i>Surah Al-Maidah 5:90</i> |
| 12 | Devouring interest | <i>Surah Al-Baqarah 2:275-78, 80, Surah Al-e-Imran 3:130</i> |

2. Prohibition of hoarding wealth

The second important commandment is that whatever wealth is earned through lawful means should not be hoarded, because due to this, the circulation of wealth would be stopped and equilibrium in the distribution of wealth would cease to exist. The hoarder of wealth is not only stricken with the worst kind of moral diseases but in fact, commits a heinous crime against society whose evil consequence he too will have to suffer. That is the reason the Holy Quran is a staunch opponent of niggardliness and “*Qaruniyyah*” (i.e. the attitude of hoarding wealth – a term named after “*Qarun*” - the greatest hoarder of wealth as mentioned in the Quran below)

وَلَا يَحْسِنَ الَّذِينَ يَتَخَلَّوْنَ بِمَا أَنْتُمْ أَتَهُمُ اللَّهُ مِنْ فَضْلِهِ هُوَ خَيْرٌ لَّهُمْ بَلْ هُوَ

شَرٌّ لَّهُمْ

And let not those who covetously withhold of the gifts which Allah hath given them of His Grace, think that it is good for them: Nay, it will be the worse for them.

(Surah Al-e-Imran: 180)

وَالَّذِينَ يَكْرِهُونَ الْأَذْهَبَ وَالْفِضَّةَ وَلَا يُنْفِقُوهُنَّا فِي سَبِيلِ اللَّهِ فَبَيْهُرُ هُمْ

يَعْذَابٌ أَلِيمٌ ﴿٢٠﴾

And there are those who bury gold and silver and spend it not in the way of Allah: announce unto them a most grievous penalty.

(Surah Tauba: 34)

This thing strikes at the roots of Capitalism. To hoard wealth and invest it in creating more wealth is actually the very essence of Capitalism. But Islam does not like people to hoard wealth in excess of their requirements.

3. The command to spend

Instead of hoarding, Islam encourages judicious spending. But by spending, it is not intended that you spend your wealth on luxuries. But rather Islam gives the command to spend with the condition of supporting the cause of Allah. And by supporting the cause of Allah, it is meant that you spend on the welfare activities of society from whatever wealth remains after the fulfillment of your needs. As Allah says:

وَيَسْأَلُوكُم مَاذَا يُنْفِقُونَ ثُمَّ لِغُفْرَانٍ

And they ask you what they should spend. Say, "The excess [beyond needs]."

(Surah Al Baqarah: 219)

وَإِلَوَالَّذِينَ إِحْسَانًا وَبِنِي الْقُرْبَى وَالْيَتَامَى وَالْمُسْكِنِينَ وَالْجَارِ ذِي الْقُرْبَى

وَالْجَارِ الْجُنُبِ وَالصَّاحِبِ بِالْجُنُبِ وَابْنِ الشَّيْطَنِ وَمَا مَلَكَتْ أَهْمَانُكُمْ

...and to parents do good, and to relatives, orphans, the needy, the near neighbour, the neighbour farther away, the companion at your side, the traveler, and those whom your right hands possess.

(Surah Nisa: 36)

وَفِي أَمْوَالِهِمْ حَقٌّ لِلْسَّائِلِ وَالْمَحْرُومُونَ ⑯

*And in their properties there was the right of the beggar,
and the mahrum (the poor who does not ask the others)*
(Surah Dhariyat: 19)

At this juncture, Islam's viewpoint becomes evidently distinct and different from that of Capitalism.

A capitalist believes that one becomes poor by spending and hence he acquires more and more wealth by hoarding. On the other hand Islam says that one would prosper by spending and the wealth would not decrease but rather increase. As Allah says:

الشَّيْطَانُ يَعِدُكُمُ الْفَقْرَ وَيَأْمُرُكُمْ بِالْفَحْشَاءِ وَاللَّهُ يَعِنُّ كُمْ مَغْفِرَةً وَلَهُ
وَفَضْلًا

Shaitan (Satan) threatens you with poverty and orders you to commit Fahsha (evil deeds, illegal sexual intercourse, sins etc.); whereas Allah promises you Forgiveness from Himself and Bounty, (Surah Al Baqarah: 268)

A capitalist says that whatever spent is gone while Islam says...No! What is spent actually remains. In fact, one would get better returns. As Allah says

وَمَا تُنفِقُوا مِنْ خَيْرٍ يُؤْفَ إِلَيْكُمْ وَآتَنْتُمْ لَا تُظْلَمُونَ ⑭

And whatever you spend in good, it will be repaid to you in full, and you shall not be wronged.

(Surah Al Baqarah: 272)

وَآتَنَفْقُوا مِثَارَزَ قُنْهُمْ سِرَّاً وَعَلَازِيَّةً يَرْجُونَ تِجَارَةً لَّكُنْ شَبُورَ ⑮

لَيْوَقِبُهُمْ أَجُوزُهُمْ وَبَيْنَهُمْ مِنْ فَضْلِهِ

...and spend (in charity) out of what We have provided for them, secretly and openly, hope for a (sure) trade-gain that will never perish. That He may pay them their wages in full, and give them (even) more, out of His Grace.

(Surah Fatir: 29-30)

A capitalist thinks that hoarding of wealth and living off over interest, would increase his wealth. Islam says...No! Wealth would actually decrease because of interest. The way to increase wealth is investing it in good and in virtuous works. As Allah says

يَمْحُقُ اللَّهُ الرِّبَا وَيُرِيبُ الصَّدَقَاتِ

Allah will destroy Riba (interest) and will give increase for Sadaqat (deeds of charity, alms, etc.)

(Surah Al Baqarah: 276)

وَمَا آتَيْتُمْ مِنْ دِيْنٍ لَكُمْ بِأَنَّمَا الْأَئْمَانُ فَلَا يَرْبُو أَعْنَدَ اللَّهُ وَمَا آتَيْتُمْ مِنْ رِحْمَةٍ تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَئِكَ هُمُ الظَّاغِنُونَ ﴿٢٧﴾

And that which you give in gift (to others), in order that it may increase (your wealth by expecting to get a better one in return) from other people's property, has no increase with Allah, but that which you give in Zakat seeking Allah's Countenance then those, they shall have manifold increase. *(Surah Al Room: 39)*

This is a novel theory, quite opposite of the theory of Capitalism.

With the concept that money grows due to spending, it follows that the money spent does not go waste but rather comes back with greater benefits. However in contrast instead of increasing the money, interest would decrease it. Apparently the increase in wealth by giving away Zakat and charity, etc. sounds quite bizarre. A person listening to these ideas might think that all these altruistic ideas might be related only to rewards in the Hereafter. There is no doubt that these things are also related to the rewards in the Hereafter and for Islam they do carry primary importance. But if keenly observed, it would become abundantly clear, that even in this world, economically, this notion stands on firm foundations. The final outcome of hoarding wealth and living off interest is that gradually, wealth would be accumulated in the hands of a few.

Day by day, the purchasing power of the majority of the people would be reduced. Industry, trade and agriculture would suffer 'Depression'. The economy would stand at the brink of destruction. And at last, the capitalists themselves would not find any opportunity to invest their money in any project or work that could increase their wealth³.

In contrast to this, the end result of spending (for the sake of Allah), giving *Zakat* and charities is that the wealth would spread across all sections of society (and would not remain in the hands of a select few). Every person would gain enough purchasing power. Industry would flourish. Agriculture would prosper and business would boom. Everyone might not become a millionaire or a billionaire, but would at least attain a minimum degree of prosperity. If one wishes to verify the truth of the "trickle down" economic theory (promoted by Capitalism), then one should look at the present economic conditions of America⁴ where, precisely because of (the prevalence of) interest, the equilibrium of wealth distribution has been ruined and the depression prevailing over industry and trade has brought the nation's economic life to the verge of destruction. In sharp contrast to that please analyze the conditions prevailing at the beginning of the Islamic era. When this economic theory was put into practice the prosperity of the nation reached such glorious heights in only a few years that (poverty was totally eliminated and) people had to search for the needy deserving *Zakat* (the poor-due). And (the reality is that) they could barely find anyone who was not well-off (and deserving of *Zakat*). By comparing both these approaches (that of Capitalism and of Islam) one would realize how Allah effaces interest and nurtures charity. Then, the mindset which

³ This fact is pointed out in a Hadith of the Prophet (pbuh) where he said :"However much the interest be, in the end, it only leads to reduction (in your earnings)" – Ibn Majah, Ahmed, Bayhaqi

⁴ This is with reference to that dreadful 'Depression' prevailing at the time this book was being written.

Islam produces is absolutely different from that of the capitalist. A capitalist can never imagine that a person could lend money to others without charging interest. The capitalist not only charges interest, but does not feel any remorse in stripping the debtor's clothes and confiscating his meager provisions for the recovery of his principal amount and interest. Islam however instructs its followers that not only should the needy be provided with loans (without any interest) but if the needy falls into hard times and is unable to repay then the loan must be pardoned. As Allah says:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرْهُ إِلَى مَيْسَرٍ وَإِنْ تَصَدَّقُوا خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ ﴿٢٨٠﴾

And if the debtor is in a hard time (has no money), then grant him time till it is easy for him to repay, but if you remit it by way of charity, that is better for you if you did but know.

(Surah Al Baqarah: 280)

Under Capitalism the implication of financial support to the underprivileged in society is that you first take membership (become a shareholder) of a support organization (insurance company/bank) by way of monetary contribution (the premium/savings) and then if you are in need of anything, the organization would provide you a loan with an interest rate that is slightly less than the market rate. And if you have no money, then you cannot receive any aid from this "support" organization. The concept of financial support in Islam is that the rich not only lend money to the poor (without interest) in their hour of need but also help them in repaying the loan as a gesture of gratitude to Allah. Therefore, of the many categories towards which *Zakat* funds can be utilized are those debtors who are unable to pay-off their loans.

A capitalist does charity and philanthropy merely to show off because in this myopic view the minimum remuneration he expects from his charity is to get name and fame, to become popular and to establish his awe and reputation. But Islam says

that one should not spend in order to show-off and whenever the one who does charity in public or in private must always bear in mind that he would be suitably reimbursed by God for the generous contribution. The donor will find his spending ever growing and yielding tremendous fruits, in this world and in the Hereafter too. Allah says:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تُبْطِلُوا صَدَقَاتُكُمْ بِإِلَهٍ مِّنْ أَنْوَارٍ وَالْأَذْيَى كَمَا لَنِي يُنْفِقُ مَا لَهُ
رِئَاءُ النَّاسِ وَلَا يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَمَغْلُظَةُ كُتْلَنِ صَفَوَانِ عَلَيْهِ
تُرَابٌ فَأَصَابَهُ وَأَبْلَى فَتَرَكَهُ صَلْدًا لَا يَقْدِرُونَ عَلَى شَيْءٍ هُنَّا كَسِبُوا وَاللَّهُ لَا
يَهْدِي الْقَوْمَ الْكُفَّارِينَ ۝ وَمَثْلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ إِبْتِغَاءَ مَرَضَاٰتٍ
اللَّهُ وَتَعَالَى مِنْ أَنفُسِهِمْ كَعْلٌ جَنَّةٌ يَرْبُوَهُ أَصَابَهَا وَأَبْلَى فَأَتَهُ أُكْلَاهَا
ضِغَفَيْنِ قَدْنَ لَمْ يُصِبَّهَا وَأَبْلَى فَقْلٌ وَاللَّهُ يَعْلَمُ أَعْمَلَهُنَّ بِصَيْرَ ۝

O you who believe! Do not render in vain your Sadaqat (charity) by reminders of your generosity or by injury, like him who spends his wealth to be seen of men, and he does not believe in Allah, or in the Last Day. His likeness is the likeness of a smooth rock on which is a little dust; on it falls heavy rain which leaves it bare. They are not able to do anything with what they have earned. And Allah does not guide the disbelieving people.

And the likeness of those who spend their wealth seeking Allah's Pleasure and to strengthen their own souls are sure and certain that Allah will reward them (for their spending in His Cause), is the likeness of a garden on a height; heavy rain falls on it and it doubles its yield of harvest. And if it does not receive heavy rain, light rain suffices it. And Allah is All-Seer of (knows well) what you do.

(Surah Al Baqarah: 264 - 265)

إِنْ تُبْدِلُوا الصَّدَقَاتِ فَبِعِمَّا هُنَّ مُحْكَمُونَ وَإِنْ تُخْفُوهَا وَتُؤْتُوهَا الْفَقَرَاءَ فَهُوَ خَيْرٌ لَّكُمْ

If you disclose your Sadaqat (alms-giving), it is well, but if you conceal it, and give it to the poor, that is better for you.

(Surah Al Baqarah: 271)

When a capitalist spends money on some virtuous works or does charity, he does so very reluctantly, giving away those items that are cheap and of inferior quality. And to whosoever he gives, he tortures him with his piercing or insulting comments for the favour conferred. In complete contrast to this, Islam teaches to give away quality material and goods and not to boast about the favour and not even expect gratitude from others.

Allah says:

أَنْقُوا مِنْ كُلِّ بَيْتٍ مَا كَسَبُوكُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الْأَرْضِ وَلَا تَنْهَوْا
الْحَبَّيْثَ مِنْهُ تُشْفِقُونَ

Spend of the good things which you have (legally) earned, and of that which We have produced from the earth for you, and do not aim at that which is bad to spend from it...

(Surah Al Baqarah: 267)

لَا تُنْهِلُوا صَدَقَاتَكُمْ بِالْمُنْهَى وَالْأَذْى

Do not render in vain your Sadaqat (charity) by reminders of your generosity or by injury *(Surah Al Baqarah: 264)*

وَيُظْعَمُونَ الظَّعَامَ عَلَى حِبَّهِ مِسْكِينًا وَآسِيرًا ⑧ إِنَّمَا نُطْعِمُكُمْ لِوَجْهِ
اللَّهِ لَا تُرِيدُ مِنْكُمْ جَزَاءً وَلَا شُكُورًا

And they give food, inspite of their love for it (or for the love of Him), to miskeen (poor), the orphan, and the captive (Saying): "We feed you seeking Allah's Countenance only. We wish for no reward, nor thanks from you. *(Surah Al 'Insan or Al-Dahr: 8-9)*

For a moment just put aside the complete difference in these two mind-sets (that of Islam and capitalism) and ask yourself the honest question - that even from a purely economic perspective, of these two economic theories which one is more grounded to reality and beneficial in terms of its outcome and far reaching consequences? If this is the Islamic perspective regarding economics which you have just seen,

then why should Islam allow any form of interest-based transaction?

4. Zakat

As mentioned above, as far as economics is concerned, the objective of Islam is that wealth should not accumulate at one place. It wants the lucky and talented, who became rich and now possess means in excess of their requirements, to avoid hoarding and spend their wealth in charity instead. They must put their funds in such works and projects that enable the circulation of wealth and through which underprivileged get their due share. To achieve this, Islam imparts moral education and a highly effective method of motivation and inspiration thus producing a powerful spirit of generosity and a genuine spirit of help and support. Islam encourages people to spend their wealth voluntarily and discourages hoarding. Islam framed laws that compulsorily extract a portion of wealth for the welfare and betterment of society from all those who are still addicted to hoarding owing to their personal weakness for wealth and are still not motivated (to do charity) despite Islam's education and inducement towards generosity. This portion of wealth is called *Zakat* and it holds such an important position in the economic system of Islam that it has been included as one of the five pillars of Islam. After *Salah* (obligatory congregational prayer), *Zakat* is the most emphasized obligation. It is crystal clear that the wealth that has been hoarded can never become lawful until the *Zakat* that is due over it, is paid.

As Allah says:

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيَّهُمْ بِهَا

Take Sadaqat (alms) from their wealth in order to purify them and sanctify them with it... (Surah Tauba: 103)⁵

⁵. The word "Sadaqat" (alms) denotes a charity of fixed amount. The commandment for the Prophet (pbuh) to collect that charity signifies that

It appears very clear from the last words of the verse, that in the sight of Islam, the hoarded wealth is an impurity and something that contaminates your wealth. And it could never become pure, until its owner spends a fixed amount, every year in the way of Allah. What is 'Way of Allah'? Allah is Absolute and Independent. Neither your money reaches Him nor is He in need of that. Thus, by 'Way of Allah' is meant that you try to make the poor people of your society rich and self-sufficient and develop such beneficial works and projects which could benefit the entire nation.

As Allah says

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِيلِينَ عَلَيْهَا وَالْمُؤْمِنَةِ قُلُوبُهُمْ وَفِي
الرِّقَابِ وَالغَرِيمَينَ وَفِي سَبِيلِ اللَّهِ وَأَبْنَى السَّبِيلِ

As-Sadaqat (here it means Zakat) are only for the Fuqara' (poor), and Al-Masakeen (the poor) and those employed to collect (the funds); and for to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt; and for Allah's Cause (i.e. for Mujahidun - those fighting in the holy wars), and for the wayfarer (a traveler who is cut off from everything)

(Surah Tauba: 60)^{6(1, 2 & 3)}

other than voluntary charity, this is an obligatory and mandatory charity, which will definitely be collected from the rich people. Therefore, the Prophet (pbuh) set a specific amount concerning various kinds of wealth, below which, the mandatory charity is not to be collected. Then, in accordance with the specific amount of wealth or wealth more than that, different percentage of *Zakat* would be levied on different items. This *Zakat* is 2.5% on gold, silver and cash, to be paid annually; 10% for agricultural produce and arable land; 5% for artificially irrigated lands; 2.5% over money accrued through trade; 20% over metals and minerals which are personal properties and over buried treasures. In a similar fashion, the Prophet (pbuh) has levied different percentage of *Zakat* over various animals that are used for animal husbandry and commercial sales, which could be found in the books of Islamic Jurisprudence.

⁶ 1. The Arabic word '*Faqeer*' denotes that person who couldn't earn enough to meet his basic needs and hence is in need of help and support.

This then is the 'Cooperative Society' the 'Insurance Company' and the 'Provident Fund' of Muslims. This is how they support their industry and entrepreneurs. This is the means of nourishment to their disabled, physically challenged, their sick and unemployed and above all that this is the Islamic system of *Zakat* which frees them from worrying about an uncertain future. It is a simple and straightforward principle: if you are rich today, help others. Tomorrow if you become poor, others will help you. You need not worry about what would happen to you if you become poor? What would happen to the wife and children when you are dead? What would be the way out if any unexpected calamity befalls or when you fall sick or the house catches fire or floods arrive and play havoc? What if you become bankrupt? How would you survive when you lose all your money on a journey? *Zakat* relieves you permanently from all these worries. The only thing you have to do is to become a 'policy holder' of Allah's 'Insurance Company' by paying a certain amount of 'premium' from your wealth, as you are not in need of this money today. Hence pass it on to those who are in need of it. When tomorrow you or your children become needy, not only you would get back the money you have invested but would receive more than that.

Here again we find a total contradiction between the principles and methodologies of Capitalism and Islam. Capitalism demands that the money be hoarded and interest be charged over it in order to increase it so that funds belonging to

(Reference: Lisanul Arab). The Arabic word '*Miskeen*' as defined by 'Umar (r) is that person who cannot earn or cannot find any opportunity to earn. According to this definition, those poor children who are not yet able to earn, or the physically handicapped and the old who are unable to earn or the unemployed or those suffering from medical illness and hence unable to earn are all included in this word '*Miskeen*'.

2. This includes those newly reverted Muslims who face difficulties after embracing Islam.
3. Help from *Zakat* fund may be given to a wayfarer or the one on a journey even though he might be quite well-off at home.

people can be accumulated in that pool through these channels. Entirely contrary to this view, Islam commands that first of all, that money should not be withheld and hoarded. And if at all it is hoarded then canals of *Zakat* should be dug from this lake so that water could reach the surrounding dried up fields thus making the world lush green and succulent. However to pump out water from 'Lake Capitalism' it is mandatory to first have some funds yourself else you cannot get a single drop of water. The rule of Islam's 'Water Tower' in this regard is that whoever has excess amount of water should pump it into the tower and those who are in need of water can get it from there for free.

Obviously, these two methods are by their very nature and principles diametrically opposed to each other. And to combine these two theories together in a single economic system is synonymous to (attempting a) blending of contradictions which no sane person could imagine.

5. Law of Inheritance

Even after expending for our own necessities, contributing in the way of Allah and paying *Zakat*, if there still remains some unutilized wealth, then Islam has another strategy in order to distribute it. The intention behind this law is that whoever dies leaving behind money, then irrespective of the amount, it must be distributed among his near and distant relatives according to rank and proximity in terms of the relation with the deceased. And if there is no heir or if the heirs cannot be traced then the inheritance should be deposited in the treasury (*Bayt al-Maal*) of the Muslims so that the entire nation may benefit from it. This law of the distribution of inheritance, as found in Islam, is not found in any other economic system. The inclination of other economic systems is that the wealth which was accumulated in the hands of one person be

remained in the hands of few special persons even after his death⁷.

But Islam doesn't like the accumulation of wealth. It wants it to flow and circulate.

6. Spoils of war and the wealth of a conquered nation

In this matter too, Islam has set the same goal. Regarding the spoils of war seized by the army, the law is that it should be divided into five portions. Four portions are allocated for the army and the remaining one portion is kept to be served in projects of national interest.

As Allah says:

وَاعْلَمُوا أَنَّهَا غَنِيمَةٌ مِّنْ شَيْءٍ فَإِنِّي لِلّٰهِ حُمُسَةٌ وَلِرَبِّ السُّؤُلِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ
وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ

And know that out of all the booty that ye may acquire (in war), a fifth share is assigned to Allah and to the Messenger (pbuh) and to near relatives, orphans, the needy, and the wayfarer.... (Surah Anfal: 41)

The portion of Allah and His Messenger (pbuh) signifies the portion of spoils reserved for collective objectives and interests whose custody is entrusted to the Islamic government as stipulated by Allah and His Messenger (pbuh). The reason for reserving a portion for the relatives of the Prophet (pbuh) is because they had no share in *Zakat*. After this, a share of this fifth portion is especially earmarked for each of these three categories.

1) Nation's Orphans: Education and training is arranged for them in order to enable them to participate in the struggle for survival in this world.

⁷Primogeniture and Joint family system are based on this objective.

2) The Needy: Widows, physically handicapped, the disabled, patients and homeless are all included in this category.

3) Wayfarer: Islam has, through its moral education, molded the inclination of its followers towards offering ‘passenger hospitality’ and along with it, has reserved a portion for this purpose from the *Zakat*, charity, and spoils of war funds. This has made the movement of people across the Islamic countries considerably easy, for the sake of business, tourism, education, study, observation of historical sites and events.

The law made regarding the lands and the wealth accrued to the Islamic government as a result of war is, that these would be totally under the possession of the government. As Allah says:

مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرْبَىٰ فَلِهُوَ لِلرَّسُولِ وَلِنِسْكِينِ الْقُرْبَىٰ وَالْيَتَامَىٰ
وَالْمَسْكِينِ وَإِنِّي أَنِّي
كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِثْكُوفٌ...
لِلْفَقَرَاءِ الْمُهَجِّرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ...
وَالَّذِينَ تَبَوَّءُ الدَّارَ وَالْإِيمَانَ مِنْ قَبْلِهِمْ...
وَالَّذِينَ جَاءُوكُمْ مِنْ بَعْدِهِمْ...

- *What Allah has bestowed on His Messenger (pbuh) (and taken away) from the people of the townships, belongs to Allah,- to His Messenger (pbuh) and to kindred and orphans, the needy and the wayfarer; In order that it may not (merely) make a circuit between the wealthy among you.....*
- *(And there is also a share in this booty) for the poor emigrants, who were expelled from their homes and their property....*
- *And those who, before them, had homes (in Al-Madinah) and had adopted the Faith....*
- *And those who came after them.....*

(Surah Hashr: 7 till 10)

In this verse, not only the areas of expenditure are made clear wherein the wealth of the conquered people would be spent, but also a very clear indication is made towards that objective, which Islam, not only in the distribution of the spoils, but rather the entire economic system has kept in its purview i.e. "so that it may not circulate between the rich amongst you". This policy which the Glorious Quran has enunciated in a small but comprehensive phrase is the corner stone of Islamic economics.

7. Commandment to be prudent and economical

On the one hand, Islam has created a mechanism for circulating wealth among all the sections and classes of a nation and enabled the poor to become partners or shareholders in the wealth of the rich, as illustrated above. On the other hand, it commands every person to be prudent and economical while spending, so that people might not commit the mistake of overspending or under spending while managing their financial affairs thus disturbing the balance of wealth.

Quran's comprehensive teaching in this matter is as under:

وَلَا تَجْعَلْ يَدَكَ مَغْلُوكَةً إِلَى عُنْقِكَ وَلَا تَبْسُطْهَا كُلَّ الْبَسْطِ فَتَقْعُدْ مَلُوكًا

مُحَمَّدًا

And let not your hand be tied (like a miser) to your neck, nor stretch it forth to its utmost reach (like a spendthrift), so that you become blameworthy and in severe poverty.

(Surah Bani Israel: 29)

وَالَّذِينَ إِذَا أَنْفَقُوا أَلْهَيْرُ فُؤُوا وَلَمْ يَقْرُرُوا وَكَانَ بَيْنَ ذَلِكَ قَوْاماً

And those, who, when they spend, are neither extravagant nor niggardly, but hold a medium (way) between those (extremes).

(Surah Furqan: 67)

The intention behind this teaching is that every person should spend within the limits of the financial resources under his disposal. One must not transgress these set limits (by

overspending) which could result in more expenditure than the income. The result of this vain and extravagant spending might force one to beg, borrow and steal without any real need. And then if the person is unable to pay back the borrowed money then he would lose all the financial resources and ultimately join the ranks of poor and needy. Also Islam does not encourage a person to become cheap and miserly as to not spend even as much as his financial resources permit him.

'Spending within the limits' doesn't mean that one who has a decent salary should embark on a spending spree over his own luxuries, lavishness and self-indulgence while his own relatives, friends and neighbours continue to live in misery and hardship.

Islam considers this kind of selfish spending also as extravagance As Allah says:

وَابِ ذَا الْقُرْبَىٰ حَقَّهُ وَالْمِسْكِينُ وَإِنَّ السَّبِيلَ لَا تَبْلِغُهُ تَبْنِيَرًا ④

إِنَّ الْمُبَدِّرِينَ كَانُوا إِخْوَانَ الشَّيْطَنِ وَكَانَ الشَّيْطَنُ لِرَبِّهِ كَفُورًا ⑤

And give to the kindred his due and to the Miskeen (poor) and to the wayfarer. But spend not wastefully (your wealth) in the manner of a spendthrift

Verily, spendthrifts are brothers of the Shayatin (devils), and the Shaitan (Devil - Satan) is ever ungrateful to his Lord.

(Surah Bani Israel: 26-27)

In this connection, Islam has not settled over merely imparting moral education but has also made laws to prevent extreme types of parsimony and extravagance and block all those ways that lead to the destruction of the equilibrium of wealth distribution. It forbids gambling, prevents alcohol consumption and adultery, and prohibits many a lavish and prodigal habits of fun and frolic whose inevitable outcome is wastage of time and money. With regard to the affinity for music found in people, it keeps it within limits so that its captivation may not cause moral and spiritual degradation and

create an imbalance in one's economic life. Islam also regulates the natural aesthetic sense within reasonable limits. In the injunctions reported from the Prophet (pbuh), the chief concern among various other things relating to expensive clothes, jewels and jewelry, gold and silver utensils, portraits and sculptures is that the money which can meet the basic necessities of your poor brothers, and provide them with basic amenities of life, spending it over embellishing the body and decorating the house can never be synonymous with 'aesthetics', but rather it is cruelty and the worst form of selfishness. In short, both by means of moral education and legal injunctions, Islam has guided man to lead an extremely simple life. It recommends its adherents not to extend the sphere of their needs and desires so that it is difficult for people with average income to lead such a lifestyle and be forced to claim a share in other people's income if the occasion arises. Islam also does not want man to spend only over himself if he has more than the average income but encourages him to help his brothers who cannot earn the bare minimum for survival.

A question to the readers

The portrait of the entire economic system of Islam now stands before you. Look at it closely, again and again and tell me the areas that invoke your interest? Look at its spirit, its body, and the various organs and the relation between them. Look at the meaning and the hidden purpose behind it. Is there any room or requirement for interest-based transactions? Where can you find a place in this portrait the necessity to put a single institution from among the many institutions of Capitalism? If the answer is in the negative and it must definitely be, then after that, take a penetrating look at it and tell me that from a moral, cultural and economic perspective, what fault do you see in it? If you want to discount the highest concerns of morality and civilization, then go ahead and discard them. But if economics is the only important thing left,

then take a look at it from a purely economic perspective. Is there any fault in the principles and details of this economic system (of Islam)? Can you suggest any amendments be made in the (Islamic) system on the basis of logic and evidence without which the system would be defective? Could a better system of economy be suggested other than this (Islamic system) where a more harmonious equilibrium of rights is established and where the shared benefits between an individual and society are balanced in a better manner with equal regard to the rights of an individual and his social well-being and prosperity? And if this (- to search and find an economic system that is better than that of Islam,) cannot happen, and we assert that it can never happen, then is this what intellect and wisdom demand that you reject this excellent system of economy purely out of bias and prejudice and then follow the worst and most destructive economic system (Capitalism) with no regrets whatsoever. You deny accepting this burden of guilt in order to justify your sin, as virtue, transgression and rebellion as obedience. You falsely interpret Quranic verses and Prophetic traditions, and try to combine and create a hotchpotch of this evil economic system and Islam's clean and pure economic system. This would certainly result in a strange concoction that would certainly be irrelevant and inappropriate when compared to the principles, spirit and the nature of Islam. First, you throw away the doctor's prescription, ignore and deny his prescribed advice for health management, refuse to follow his prescribed regimen and then, when the disease aggravates and death appears to be a close and distinct possibility, you ask the very same doctor to write a similar prescription which is generally prescribed by a quack or you seek the doctor's permission to follow those very wrong eating habits that made your life hell and try and force the doctor to declare poison as the antidote! Is there any limit to this lunacy?

THE PROHIBITION OF INTEREST

The Negative Aspects

In the previous chapter we presented in brief the four fundamentals of the Islamic economic system and which form its foundations namely:

- i. Free economy within few limitations and restrictions.
- ii. The obligation of *Zakat*.
- iii. The law of Inheritance.
- iv. The Prohibition of Interest.

Of these four things, the first is now being recognized and accepted by people to be correct and true. The ugliness of Capitalism and the hideousness of Communism and Fascism do create some confusion in its details, but we hope that after going through our books "Islam and Modern Economic Theories" and "The Question of Land Ownership", this confusion would be removed.

The importance of the obligation of *Zakat* is now quite clear before the world. It is quite obvious that *Zakat* when compared to the prevalent system of welfare and insurance thought out by communism, fascism and capitalist democracy, arranges and guarantees the welfare and collective insurance on a much wider and larger scale. But here too confusion prevails due to ignorance about the detailed stipulation of *Zakat* and it becomes difficult for the people to understand how *Zakat* and *Khums* (the one-fifth portion of spoils of war reserved for Allah and His Messenger) could be promulgated in the financial system of a modern state? To remove this confusion, a brief treatise on the injunctions of *Zakat* would be composed, Insha-Allah.

Earlier, people were not familiar with the wisdom behind the path adopted by Islam with regards to the law of inheritance, a path distinct and different from others. But now, the entire world is gradually turning to it. Even Russian Communism is forced to glean from it⁸.

However in this age, people are having serious difficulties in understanding the fourth part of the plan. In the previous centuries, economics under the influence of Capitalism has deeply entrenched the notion that prohibition of interest is just an emotional reaction, and also that lending money without interest is merely a moral consideration which religion has unnecessarily exaggerated out of proportion. Otherwise logically, interest is quite a reasonable thing and economically too not worth objecting to. In fact interest is quite beneficial and necessary in practice. The effect of this misconception and its widespread propagation is that although all the other faults and defects of the modern capitalist system are examined and criticized the world over, yet no one points out the biggest of all faults (i.e. the prevalence of interest in business transactions). Not even Russia which is also nurturing this mother of all evils in its Communist empire just as Britain and America. Even Muslims, supposedly the biggest enemies of interest are severely affected by this misleading propaganda. Our defeatist 'religious scholars' are afflicted with a misconception that even if interest is objectionable (under Islam), it is actually only that interest which is charged on personal loans. As far as the interest on commercial loans goes;

⁸ The latest law of Inheritance of Soviet Russia recognizes children, wife, husband, parents, brothers, sisters and adopted child as heirs. Furthermore, it is also stipulated that a person could include his poor needy relatives in the will and could distribute his wealth to public institutions, but the right of relatives takes precedence over it. Additionally, a will which deprives the rights of the minors and the poor heirs from Inheritance, is prohibited. Thus after looking at this law, one cannot fail to realize that it was only as late as 1945 that the "Progressive Communists" have accepted such law which was legislated in 625 C.E (by Islam).

it is totally permissible, rational, lawful and good. There is absolutely nothing wrong in it from the religious, moral, intellectual and economic perspective. Over and above, they are under the wrong impression that the ancient way of money-lending and usury and the present day banking system are two different things. They are of the opinion that the 'clean' business of these banks is completely lawful and pure (and hence sanctioned and permitted by Islam); hence all kinds of business dealings under commercial loans are allowed (under Islam and they must be considered as halal and lawful). On this basis, attempts are being made to change the Shariah definition of interest and it is being claimed that this type of interest (over commercial loans) is not included in the Quranic definition of interest. Even those who escaped from this cobweb of fallacies are facing difficulties in finding a way to establish a financial system in contemporary times after legally abolishing interest.

We shall try to clear these misunderstandings in the coming pages.

Rational Justifications for Interest

First and foremost we must decide: Is interest something rational? Is the person charging interest over a loan really on the side of truth and fairness? Is it really fair for a debtor to repay the creditor with an extra amount of interest besides the principal amount? This is the first and the foremost question that we must discuss. Once we arrive at a conclusion regarding the first question then more than half the matter would be settled. Thus if interest is something rational then there would be no steam left in the argument for the 'prohibition of interest'. And if interest cannot be justified by reason and justice, then society should reflect on why this unreasonable entity still thrives and prospers in our economy.

First Justification

The first justification coming from those pleading the case for legalizing interest is as follows: Supposing a person lends his savings to another. He (the lender / creditor) takes a risk, makes a sacrifice, holds back his needs and caters to the other person's need, gives the money to other person which he himself could have otherwise benefited from. Now, if the debtor has borrowed the money to fulfill some of his personal needs, then should not a "rent" be paid for that money, just like paying some remuneration as rent for the house, furniture and transport? This "rent" would also be like a compensation for that risk which the lender has to bear. And it would also be a compensation for the fact that instead of using his own hard earned money he (the creditor) gave it to the other person (the debtor). But if the debtor has borrowed money for commercial purposes, then the lender most certainly has a right to charge interest. When debtor is taking benefits from his borrowed money, then why would not lender have a share in those benefits?

To a certain extent it is true that the lender takes a risk in lending the money and also makes a financial sacrifice. But from that, how can we conclude that he has a right to receive 5% or 10% interest annually, half-yearly or even monthly for this risk and sacrifice? On the basis of risk (undertaken by the creditor), it might be reasonable for the creditor: to demand a mortgage of the debtor's assets or grant a loan on the basis of a security / collateral or demand a guarantee over the loan or could totally avoid the risk by refusing to give loan. But risk is neither a commercial commodity that has a price, nor is it a house, furniture or vehicle which fetches a rent. As for the so-called "sacrifice and altruism", it remains a "sacrifice" as long as it is not a business transaction. If a person wants to be altruistic then let him remain philanthropic only, and be satisfied with the moral benefits accrued from this noble deed. But if he talks about compensation, then let him not talk about

altruism. As a matter of fact let him simply trade, and prove on what basis is he eligible to receive interest on a monthly or yearly basis besides the principal amount? Should these be called "damages"? But, the amount which he had lent was more than enough to meet his needs and besides that he was not even using it. So, in reality, no "damage" has actually occurred, that entitles him to receive "damages" over the loan. Is it a "rent"? But rent is actually paid on those things which a person provides for the tenants; he spends time, money and labour for their maintenance and reparation which get damaged due to usage and hence keeps depreciating. This definition is applicable to the things of daily use like furniture and means of transport etc. and demand for rent only on such things is reasonable. But this definition is neither applicable in any way to expendable commodities for instance grains, fruits etc. nor money, which is merely a means to buy commodities and services. Therefore, rent over these things is meaningless. The utmost, a lender could say is that I am giving others an opportunity to benefit from my money, and hence I should receive a share from that benefit. This is somewhat a reasonable thing to say. But this begs the question: Is the starving poor person, who has taken a temporary loan of Rs 50/- from you in order to feed his family, really making "profit" from your lent money in the same way, you claim to deserve a 2% monthly share in that profit? Undoubtedly the poor soul is making a profit, and without question, it was you who gave him the opportunity to make that profit. But on the basis of which reason, logic, justice, principles of economics and trade or anything else for that matter, did you come to the conclusion that the nature of this profit or the 'opportunity to make profit' entitles you to determine the monetary value of that opportunity. And as the problems and hardships of the debtor multiplies, so does that monetary value, and as the period of his hardships prolong, so does the monetary value of this "opportunity" keep on increasing by months and years? If you are not rich enough to lend some money to a needy or a

calamity-afflicted soul, then the least you could do is to give him a loan along with an assurance of its return and if there is no mercy in your heart then it would also be reasonable for you not to give him the loan at all. But surely it would be a very perverse kind of business deal if you look at the other person's calamity and pain as your opportunity to make profit? Starving stomachs and dying souls become your investment destinations? As human disasters multiply so do the possibilities brighten up for your profits to increase?

The only way in which this "providing an opportunity to make profit" carries any real significance is when the borrower invests the loaned amount in some profitable business. In this case, the lender has a right to ask for a share in that profit, from whose funds the borrower is deriving benefit. But it is very obvious that capital by itself does not make any profit. Profit is only possible when human intelligence and labour are applied to that capital. Again business does not start generating profit as soon as human intelligence and labour are employed along with it; rather, it takes a certain period of time to reach completion. Moreover, its profitability is not assured. There is a possibility of loss and bankruptcy. Even in the case of it being profitable, it cannot be said, how much profit would be accrued in a given time? Now, is it then reasonable and fair for the creditor / lender to start claiming profit from the very moment human intelligence and labour have touched it? And also how could it be sensible for the percentage and amount of profit to be declared the same moment (the loan is granted) even as it is still uncertain and not possible to predict if this meeting of capital and human labour would fetch a profit and in how much?

A reasonable thing which one may assert is that if a person wants to invest his savings in business then he should partner with his workers and become a shareholder in profit and loss according to an agreed proportion. How ridiculous is it that instead of becoming a partner with a certain person, I loan him

money, say Rs 100/- and tell him that since you are benefitting from this amount, I have a right to charge interest over it, say Re 1/- per month, as long as my money is being used in your business? The question is from the day his labour started using my capital, till the time his goods are sold in the market and profit earned, does business make any gains in this entire time period in which I demand a share of continuous profits (in the form of interest)? If he incurs loss in the business, then according to which dictates of logic and justice do I have a right to receive this monthly "profit"? And if the debtor suffers a loss of Re 1/- per month, then do I still have the right to take Re 1/- per month as "profit" from him? And if his net profit is only Re 1/- then what kind of justice deems it lawful, that a person who has invested his time, efforts, talents and his own capital throughout the month and at the end received nothing, and the one who has given merely Rs 100/- and stayed away from him and his business, gets all his profits? Even a bull which plods in the oil mill for the oil-man has a right to ask for fodder, but this usurious debt makes the businessman like the bull who toils hard for his lender, but is forced to search for fodder somewhere else. If this businessman supposedly makes a profit after paying off this predetermined amount of interest charged by the lender, even then, in terms of logic, justice, business principles, economic laws or anything else for that matter, it still cannot be justified that the profit of traders, craftsmen, farmers and all those who are the real producers, who spend their time, apply their intelligence and expend all their energies to produce goods and services for society remains uncertain and indeterminate, while the profit of that lone person (the lender) is fixed and guaranteed, who has merely provided his savings as loan! All others are supposed to face the risks of uncertainty and bear the brunt of losses while the lender's profit is 100% guaranteed! The percentage of profit of all these people is subject to market risks and moves up or down, but this gentleman (the lender / creditor) who has decided (and demanded) a fixed amount of profit, is not

subjected to market risks and is supposed to receive his share month after month and year after year⁹!

Second Justification

After this critique, it becomes very clear, that the evidence hitherto considered strong enough to justify interest starts getting a hit and needs to be analyzed in detail. As for personal loans, there is no rational evidence at all to corroborate the charging of interest over it. Even the custodians of interest have withdrawn themselves from defending the charging of interest for personal loans. As for the interest over commercial loans, their proponents face a perplexing question: When we pay interest, what exactly are we paying the price for? What exactly is that crucial entity – that extra which the lender provides the debtor along with the loaned amount? What is that ‘extra’ which the debtor gains besides the loan amount in that it entitles his lender to receive back along with the loaned amount a fixed compensation according to the monetary value of the loan and that too month after month and year after year? The proponents of interest face a major problem in determining this extra!

One group is of the opinion that the ‘extra’ is the “opportunity to make profit”. But, as we know from the above critique, this “opportunity” cannot be a justification for

⁹ An objection could be raised at this place, that how could you allow tax on arable lands to be lawful whose position is exactly like interest? But actually this objection is directed at those who consider determination of monetary tax in advance over arable lands for example Rs 50/- per acre to be lawful. I do not agree with this. Rather, I myself consider it similar to interest and hence answering this question is not my responsibility. In my view, the correct deal between the landlord and the farmer is “division”. That is, whatever be the production, one half belongs to the landlord and the other to the farmer. This is similar to a business partnership and I consider it to be lawful. As for the land rent, I have presented my view in my book, “The Question of Land Ownership” and no objection should be raised over it.

charging an amount of money that is fixed, certain and of ever-increasing value. Rather in that case, it vindicates our position for proportional profit, if the loaned amount actually benefits the borrower.

Another group adopted a little different position saying that it is "time", which the lender gives it to the borrower along with his capital. This 'time' in itself has a value, hence longer the time, greater the value. Each and every moment is precious for the businessman from the day he invests the capital to the day the product arrives in the market and brings revenue. If this time period is not given to him and the capital is withdrawn all of a sudden by the lender, then his business could collapse. Therefore, time definitely carries a lot of importance for a person who has borrowed the money with which he is making profit. Then why should not the lender take something from the borrower as profit? As the possibilities for the profit inevitably fluctuate with the increase and decrease in time (duration of loan), should not the lender predetermine the value of profit (interest rate) according to the time provided? But again there is a slight difficulty. How did the lender come to know that the person who is borrowing the money to invest in business is definitely going to make profit and will not incur any loss? How did he find out that this borrower would surely earn 100% profit, and hence have to repay the borrower such and such percentage of profit? And with which instrument did the lender calculate the exact amount of profit the borrower would doubtlessly make every month and every year in a given period of "respite" and its monthly and yearly value might thus be ascertained? No rational answer do the custodians of interest have for these questions. And at the end, the matter once again comes to the point that in business transactions, the only thing which is rational and reasonable is partnership in both profit and loss and a proportional share and not interest which is charged with a fixed percentage.

Third Justification

Another group says that profitability is an inherent attribute of capital, and hence a person's utilization of another's money is by itself a justification for the lender to charge interest and for the borrower to pay it. Capital has the power to help in the production and the distribution of essential commodities. A large quantity of products can only be produced with the help of capital. More the capital invested greater would be the quality and quantity of production, fetching higher profits once sold in the market. With less capital at ones disposal, production would suffer both in quality and quantity and would not be able to reach the required markets that fetch a better price. This is proof that profitability is something inherent in capital. Hence its mere utilization creates a vindication for charging interest.

First of all from the outset itself this claim is wrong that capital possesses this so-called inherent characteristic of "profitability". This characteristic (of profitability) is produced in it (the invested capital) only when a person applies that capital in some productive work. Only in that case, can you say that since the borrower is investing the capital in some beneficial work, he ought to give a share from the profit to the lender. But if a person borrows for medical treatment or for covering something as basic as funeral expenses, then which profit and how much profit does this lent out capital makes in which the lender claims to have a legitimate share?

And again, it is not necessary that the capital invested in useful projects inevitably yield profits so that it can be claimed that profitability is an inherent characteristic of capital. Sometimes huge capital investment also results in losses rather than profit. This is precisely the reason why we have financial crises every now and then in the business world. When the capitalist invests capital in an unregulated manner and when the production rises (thereby increasing supply of goods and services) then it results in the reduction of prices (because of

increased supply) and then this deflation reaches such levels that no more profits can be expected even if the amount of capital invested is increased.

Moreover, even if we assume that there is an inherent trait of "profitability" in capital, it is still dependent on many other factors to transform this potential capital into productive resources. For instance these (transformative) factors are the hard work of labour and management with their skills, ingenuity and experience, the congeniality of the economic, cultural and political environment during the period of its utilization, protection from the disastrous upheavals of the age and other such factors are all necessary conditions of profitability. If even a single factor is missing then at times the entire profitability of the capital would be ruined and on the contrary it would result in monetary loss.

But in interest-based transactions, the lender neither tries to shoulder the responsibility of fulfilling these factors, nor does he believe that he would not be entitled to charge interest in case any of those (transformative) factors (that change capital into profits) is missing and his investment capital fails to bring any profits. Rather the lender is a believer and proponent of the idea that the utilization of capital, by its own virtue creates a justification for a fixed percentage of interest, irrespective of the profit generated! Now even if we agree to the fullest extent that 'profitability' is inherent in the invested capital then on what basis is the lender entitled to claim a share in the profit of the business and which calculation tells him the current value of profitability of capital and hence supports his claim of charging a fixed percentage of interest. Even if this proposition is accepted that the determination of this percentage (of profit) is somehow possible in the present times (with cutting edge statistical tools and information technology) but then again we are completely unable to understand that how could a capitalist, who has lend money in 1949 to a business institution for ten years and to another for 20 years

with the current percentage of interest, would know that during next 10 or 20 years, the profitability of the capital would be the same as it is now? Especially when in 1959, the interest rate in the market could be different than in 1949 and even more so in 1969. Thus, on what basis could a lender be justified who has appropriated a share in the expected profit from the capital lent to two separate business organizations for 10 and 20 years as per the 1949 interest rate?

Fourth justification

This final justification offered by its proponents is genuinely ingenious. Its summary is as follows: Man prefers the benefits, enjoyments and peace of the present over that of the future; more distant the future, more unlikely and uncertain would be the benefits and pleasures. And in a similar fashion, the value of these things keeps on decreasing in the sight of man. There are numerous reasons for this preference of the present over the hopeful and uncertain future. For instance:

1. The unknown and uncertain future of life. Thus forecasted benefits become unlikely with no concrete picture available on the canvas of his imagination. Contrary to this, the benefits available today seem certain and are seen live.
2. Meeting the current needs is more valuable for a person than the future, because it is possible that he might or might not be in need of the thing which he desperately requires today.
3. The money made currently has practical utility. On the contrary he has little control over the utilization of money that would be made in the future.

Due to these reasons, people prefer the current monetary benefits over the doubtful benefits of the future. Therefore, the value of the loan taken today is definitely more than the amount that would be repaid tomorrow. Thus interest is the extra amount that would be included in the principal amount at

the time of payback and would equalize the original greater value (thus acting as a compensation for the amount) which the debtor received when he took the loan. For the sake of illustration suppose a person borrows Rs 100 from the money-lender. The money-lender makes a deal with him that he would take Rs 103 by the end of the year instead of Rs 100 which he gives now. In these transactions, an exchange of Rs 100 of today is being done with the future (value) of Rs 103. These Rs 3 are equal to the psychological (not economical) difference which is found between present and future money. Unless these Rs 3 are added to the Rs 100 to be paid at the end of the year, its value could never be equal to the original Rs 100 which the money-lender lent to the debtor at the time of borrowing.

It would not be polite, if the shrewdness of this justification is not appreciated. But the explanation given regarding the difference in the present and future psychological value (of capital) is nothing but a fallacy.

Does human nature really prefer and value the present as compared to the future? If this is the case, then why do most of us consider it wrong and inappropriate to spend all our earnings on the present? Obviously all of us prefer to save a portion of our earnings for the future? Perhaps you will not find even 1% of the people who are free from the worries of tomorrow and prefer to spend all their money on the enjoyments and pleasures of 'today'. Almost 99% of the people would want to withhold the pleasures and enjoyments of today and save some thing for the future. Because, many of the expected and possible anticipated necessities which a person visualizes in his mental picture of the future are more important and bigger than the present conditions with which he is passing through. After all, what could be the purpose of all the efforts, and hard work of a man be other than having a better future? The exact reason for a person to labour the whole day long 'today' is only to have better 'tomorrow' and spend

the coming days of his life as best as he can. You can hardly ever find a person who would be naïve enough to make his present happier at the cost of his own future. It is a different thing if he has made this mistake out of ignorance, or immaturity or even blinded by his desires, but no person would consider this behaviour to be correct and rational after careful deliberation.

Even if this proposition is accepted for the time being, that a person considers it correct to bear the loss in future for the sake of enjoying the pleasures of the present, even then that argument somehow does not fit well. The argument is based on the claim that the deal that took place between the lender and borrower at the time of borrowing was that the value of Rs 100 of the present is equal to Rs 103 a year later. But now, what has really become of the deal when the time has come for the borrower to repay? The Rs 103 of the present have become equal to Rs 100 of the past. And if the borrower failed to pay the Rs 103 that year, then at the end of the next year, the value of Rs 100 of the distant past is now equal to 106 rupees of the present. So, in reality, is the proportion of value between the past and the present increasing or decreasing? This puts a big question mark on the hypothesis that more distant the past, greater its value compared to the present? Is meeting the needs of the past so important to you that the amount of money given to you a long time ago, which you have already forgotten by spending it, should become more valuable to you than the present by every hourly movement of time? Even to the extent that it has been 50 years now since the day you consumed the Rs 100 and now its value has become equal to Rs 250?

The “reasonableness” of the rate of interest

This is the *summum bonum* (Latin expression meaning “the highest good”) of all the evidence which the proponents and custodians of interest present in order to prove that interest is lawful and conforms to the standards of reason, logic and

justice. You can understand from the above critique, that ‘interest’ has no relation whatsoever with “reasonableness”. No amount of proof can suffice to demonstrate the reasonableness of the contention that interest should be charged and deserves to be paid? But isn’t it bizarre that the Western intelligentsia have included such an unreasonable thing (as interest) in the list of self-evident and indisputable facts. They have assumed the rationale of interest per se, to be a given reality and hence focused their discussion only over the quantum of interest rate; asking for it to be “reasonable” and “humane”. Discussion about the “rightness” or “wrongness” of interest can hardly be found in modern literature. However, its affirmation and negation is more often than not concerning a certain quantum of interest rate being “inappropriate” and “beyond the limits” and hence objectionable and a certain quantum of interest rate being “reasonable” and thus acceptable.

But the reality is: Can any rate of interest be considered reasonable? For the time being, we will digress from this question. When the “reasonableness” per se of something or its existence itself could not be proved then how could the question of its “rate” being reasonable or unreasonable arise? But let us keep aside this question for a while, and delve into answering the following: What is that interest rate which could be termed natural, humane and reasonable? And what is the standard of measurement by which we can conclude that a particular interest rate is “appropriate” while the other is “inappropriate”? As a matter of fact, is the rate of interest in today’s financial world being determined on rational and coherent grounds? When we delve into this question to search for an answer, the foremost reality with which we are confronted is that this thing called “reasonable interest rate” has never been found in the entire world! Different rates were considered reasonable in different periods of time and later on the very same rates were considered unreasonable. As a matter of fact, in the same time period, the rate of interest at one place was quite different from another place. In the ancient Hindu

period, according to Kautilya, an annual 15% to 60% interest rate was considered perfectly reasonable and if the risk was greater, so was the rate. In the late mid-18th century and early mid-19th century, in the financial dealings with the Indian states, the local money lenders along with the East India Company charged an annual 48% interest rate. During World War I (1914-1918), the Indian government received loans at an annual interest rate of 6.5%. During 1920-1930, the common rate of interest in the cooperative societies was 12-15%. In the 30's and 40's, the Indian courts of Law considered approximately 9% annual interest rate to be reasonable. During World War II, the annual rate of interest as determined by the Reserve Bank of India was 3 %. This rate was also maintained during the War, even as the Indian Government received loans at 2.75% rate of interest.

This was the scenario in our own sub-continent. If you take a look at Europe, even there, you will find a similar scenario. In the mid-16th century England, 10% rate was considered perfectly reasonable. Around 1926, some of the Central banks of Europe charged 8% or 9% of interest. Even the League of Nations, whose mediation provided the European states with loans at that time almost had the same rate of interest. But today if this rate of interest were to be mentioned in Europe and America, they would scream out and say "this isn't interest, its daylight burglary"!!! . Now, wherever you see, 2.5% or 3% rate is discussed and debated, 4% is extreme and in some cases, it reaches 0.5% or 0.25%. But on the other hand, according to the 1928 Money Lenders Act of England, 48% of annual rate of interest was legislated as lawful for the loans granted to poor and economically backward people. And the American Courts which have determined the rate of interest for the money lenders to lend their money begins with 30% and reach up to 60% per year. Now tell me, out of these, which interest rate should be considered natural and reasonable?

Now, let us pause for a moment and reflect if any interest rate can be natural and reasonable? When you ponder over this question, your own understanding will tell you that if at all the determination of interest rate was possible; it would only be possible when the value of the profit is determined on a borrowed amount that has been invested in a business. For example, if it was possible to determine that Rs 100 invested in a business for one year, would bring Rs 25 (profit) at the end of the year then it could have been possible to decide if Rs. 5 or Rs.2.5 or Rs. 1.25 should be the lender's natural and reasonable share whose money was used by business during that year. Obviously, the profit made from this money was never estimated in this manner, nor could it have been determined thus. The prevalent rate of interest is never decided in this way as to how much profit will the borrower be able make from the money loaned and for that matter would he make any profit at all? Practically all that happens in the money lending business is that the value of debt is determined according to the helplessness of the borrower, and in the market of commercial interest, the raising and lowering of interest rate is based on other grounds which have no relation whatsoever with reason and justice.

Rationale for the rate of interest

In the money lending business, generally the money lender looks at the debtor's level of poverty and desperation? How helpless is he? In how deep a trouble and pain would he get into if he fails to get that loan? According to these standards, he would decide how much interest could be charged over the loan? If the borrower is not that poor and is asking for a smaller amount and does not seem so worried and desperate then the interest rate would be less. As opposed to this, if the condition of the borrower is dire and the extent of his need is acute then the interest rate is very stiff; to the extent that even if the child of a starving person is dying of illness, the interest

rate of 400% or 500% would not be considered "inappropriate". Thus the "natural" rate of interest swings according to the level of need of the debtor.

Economists pursue the following two methods to determine the raising and lowering of interest rates:

- I. One group says that the law of supply and demand should be the foundation for determining interest rates. They say that in a situation where there are few debtors and more funds ready to be loaned then the rate of interest decreases, to the extent of hitting rock bottom. From that point onwards people start considering it an opportunity and hence tend to take more loans in order or invest it in business. And when the demand for money starts to increase and the funds ready to be loaned keep decreasing, at this point of time the interest rate again starts increasing till it reaches the point where the demand for loan ceases (because of the exorbitant rate of interest).

Now just think about what the above means. A capitalist (lender) does not make a deal with a (debtor) businessman in a just and truthful manner and expects an accurate share in the businessman's real profit. Instead he speculates that this person would definitely make at least this amount of profit and hence I should be entitled to get this amount of interest over the money which I had lent. On the other hand the (debtor) businessman also speculates that if I get only such and such amount of profit from this borrowed money then the interest should not be more than this. Both of them speculate. A capitalist (lender) always makes an exaggerated estimation of the profit while the businessman (debtor) always keeps the anticipation of loss along with hopes of profit in his estimation (of the future course of his business). Thus instead of cooperation, there is a constant state of conflict between them (the lender and the debtor). When a businessman wants to invest the capital on the basis of a possible profit, the capitalist would begin to raise the cost of his credit so high that it becomes futile to invest the

money in business with such high rate of interest. In this way, in the end, investment declines and the economic development gradually come to a halt. And when depression gets hold of the financial world and the capitalist feels that his own destruction is nigh then he lowers the interest rate, to a degree that businessmen begin to borrow money at this rate and invest it in the businesses with the aim to make profit. And thus capital again returns to the industries, trade and markets. Thus it is very obvious that if there could be a cooperative partnership on a reasonable basis between capital and business, then the economy of the world could be governed smoothly and easily. But when the law itself has opened the door for the capitalist to charge exorbitant interest and has propelled the spirit of speculation and gambling between capital and business and when the raising and lowering of interest rate is carried on the basis of speculation then the world is bound to be trapped into a recurring economic crisis.

The other group justifies interest in the following manner. When a capitalist wants to use the capital for himself he raises the rate of interest. And when his requirement (for credit) is fulfilled the rate of interest also decreases. As for the question - why does the capitalist prefer to keep the funds only for himself, then this second group has plenty of reasons to offer. Keeping some amount of money for personal or business purposes is necessary and some amount must be saved for sudden and unexpected personal financial requirements. The third and the most important reason is that the capitalist always wants to be ready with enough funds to make profits at any time in the future when the demand for credit increases along with the interest rate. Now the question which begs an answer is: Does the fluctuating desire of the capitalist to keep funds for himself find a reflection in the increasing or decreasing rate of interest in the market? The answer to this question is in the affirmative. The capitalist's desire varies with the different personal, social, political and economic reasons. Sometimes this desire (to retain funds for himself) increases and hence the

capitalist raises the interest rate thereby decreasing funds available for investment in business and sometimes this desire (to keep funds for himself) decreases and hence the capitalist lowers the interest rate thereby making it easier for people to take more loans and invest in trade and industry.

Just take a look at what lies behind this beautiful justification. As far as the private needs and personal business requirements of a capitalist are concerned, his desire to keep the money for his own use hardly impacts 5% of his overall capital and that too in all kinds of special and extraordinary conditions. Therefore, it is not correct to unnecessarily exaggerate the importance of the first two reasons. Then why does he at times withhold 95% of his capital and at other times releases it in the market for loans? The answer to this question lies in the third reason. The reality is that the capitalist looks at the conditions of the entire world including and his own nation with remarkable selfishness. He sees some specific signs in such conditions on the basis of which he starts coveting a weapon that he should have at all times through which he could take undue advantage of society's problems, disasters and troubles and could thus increase his own wealth property by exploiting the problems of others. That is why to heat up speculation and gambling, he withholds the money, raises the interest rate, stops the flow of money to trade and industry in one stroke and opens the gate of the dreadful suffering called "depression". And then, when he realizes that he is now exhausted by the huge illegal profits he made and realizes that there is no possibility of further profits but rather his immoral business of money lending has reached a plateau from where he would only accrue losses then the "desire to keep the capital for his own personal use" vanishes from his evil heart and he starts granting generous rewards by tempting people with low interest rates. "I have a lot of money to invest in your business", he says.

These are the only two justifications presented by contemporary economists and both are correct with respect to their positions. But the question is, whatever the reason be, how could it be established from it, that the interest rate is "natural" and "reasonable"? We have to change the meaning of intellect, rationality and nature or we have to admit that as unreasonable as the concept of interest is, so are the factors that determine, raise and lower its "rate"!

The Economic "Benefits" of Interest and Its "Requirements"

After this, the proponents of interest bring in the debate that interest is an economic necessity and there are some benefits which cannot be accrued without it. The summary of the supporting evidence for this claim is as follows:-

1. The entire trade and business of the economy depends on the accumulation of capital and this accumulation cannot be possible without people restricting their necessities and desires, personal expenditures and saving a part of their salaries for themselves. This is the only way capital can be gathered. But why should a person volunteer for cutting his needs and prudence in spending, if he is not rewarded for this self-control and sacrifice? Interest is the only reward whose hope motivates people to save money. If you forbid it, then the process of rewarding resourceful people would cease, who are the real means of continuous delivery of capital.
2. The easiest way to keep the capital flowing in the economy is to perpetually keep the door open for the people to invest or utilize their accumulated wealth by earning interest. Thus it is the greed of interest that makes them hoard wealth and also motivates them not to waste their savings but to give them to businessmen and keep receiving interest over their savings (deposits) at a fixed rate. Closing this door would mean that not only an important incentive would be lost for the accumulation of

capital but also no funds howsoever little would be invested in business.

3. Interest not only makes the capital productive and brings it into business; it also prevents its wastage. And it is the interest rate which makes sure that capital flows to the best of all projects that would produce the highest yields. No financial strategy other than this can be thought of which discriminates between beneficial, non-beneficial and less-beneficial options and directs the flow of capital towards profit. If you abolish interest, then its consequence would be that people would spend their money recklessly and would start investing their funds without thinking about the possible profit in worthless and stupid ventures.
4. Loan is a “necessary evil” in human life; everybody needs a loan: Individuals require it for their personal needs, businessmen need it every now and then, and even the governments cannot run without it. For how long and to what extent could loans be provided and that too on such a large scale merely on charity? If you do not allure the rich people with interest and fail to convince them that they would keep receiving interest besides their principal amount, then they would hardly be ready to give loans and in this way, owing to cessation of constant supply of credit it would have a very negative impact on the entire economy. Although, in times of severity, a person will even borrow from a money-lender, but it is actually the greed of interest that makes credit float in the market and thus drive the economy. Businessmen get quick loans and their businesses keep running. If this door is closed, then it cannot be said how many times they would have become bankrupt. This is also the case with governments. Their needs too are met solely by interest. After all, where can they find such generous providers of funds worth billions of rupees?

Is Interest Really Necessary and Beneficial?

Now we shall analyze this so called "benefit" and "necessity" one by one and see whether these are really "beneficial" and "necessary" in the first place, or all this is just a satanic insinuation.

The first and foremost misconception is that people consider prudence in spending and the hoarding of their wealth as something which is necessary and beneficial. However the reality is a little different. In fact, the entire economic development and progress of a nation depends on the quick and continuous sale of goods and services collectively produced by society. It is important for the cycle of production and consumption (supply and demand) to move with speed and balance. This is possible only when people in general become accustomed to spend money from their hard-earned income. Then this spending must also cater to the less privileged members of society so that they too are able to buy the basic necessities of life without any worries. But contrary to this, if you teach people who have money more than enough to meet their needs, to be stingy (which you interpret as self-control, sacrifice, abstinence, etc.) and educate them to abstain from catering to a part of their appropriate and reasonable needs (by restricting spending) and hence encourage every person to hoard as much wealth as possible then its greatest benefit in your view is that this accumulated capital would flow towards growth in business and trade. However the greatest loss this would cause is that a large portion of (the saved) money which is available at present in the market would remain (stashed in banks and money-vaults and thus) unutilized. Thus those who already have low purchasing power will not be able to spend whereas those who have enough purchasing power despite their ability won't spend a substantial portion of their income on goods and services (in order to keep saving for the unexpected future). As for those, who have a very high degree of purchasing power instead of transferring it to others will

withhold it for themselves. Now, if this to happen in every economic cycle, then those who have enough purchasing power and those who have even more do not use a large portion of it, neither spending on commodities nor giving funds to those who have less, but instead keep holding back, and accumulating and saving it, then its consequence would be: the sales would be curtailed, production would stop and unemployment would increase due to decreased consumption. This unemployment could severely affect earnings of the people, and ultimately decrease in earnings would keep the consumption low. In this way, hoarding of wealth by few would become a reason for the poverty of many. At the end, this hoarding would become a threat to them. Instead of utilizing the wealth by way of purchasing, they kept on hoarding and investing it in more and more production. Obviously this surplus production (leading to high inventory and unsold goods) will not be able to find the required consumers. One should realize after due deliberation that the actual economic requirement is to eliminate the factors which make people incline towards holding and hoarding their wealth instead of spending. The economic prosperity of the entire society requires a collective arrangement and mechanism that enables every person to receive financial aid in times of difficulty so that people never feel or see the necessity for blocking their savings, and on the other hand, *Zakat* be levied on the accumulated wealth, so that the inclination towards hoarding is reduced. Even after that, if there remain some funds which are not utilized, then such arrangements be made which guarantee the flow of money to those who received a lower share in the circulation of wealth. But, contrary to this, what is happening is that we are inciting and encouraging the inherent weakness of stinginess found in the people by alluring them with promises of interest thus forcing people to hoard their wealth instead of spending it.

You bring this "anti-social" accumulated capital acquired through wrong means to business by way of interest. This is

the second ‘wrong’ you commit for the “collective benefit” of society. It would not have been a problem had this accumulated wealth been invested in business on the condition that the capitalist would receive a share according to a proportion in the profit made from business. But you invest the money with the condition that irrespective of any profit made in business whether more or less, in any case the capitalist (investor) would definitely receive such and such percentage of profit. In this way you have caused double damage to the economy. The first damage resulted from not spending the money and holding it back. And the second was, although this withheld money returned to the economy: it did so not on the principle of partnership in business, but as credit weighing heavily on trade and industry with the law backing it with a guarantee of “sure profit”. Because of this most people having purchasing power, rather than spending on goods and services are holding back and burdening the society with “interest-seeking loans”. And the society is beset with this ever-increasing complicated problem namely: how are these loans and interest which are increasing every second to be paid off even as consumption is down and so is market demand going bad to worse. Millions of people do not buy, for the simple reason of not having money. And thousands of people do not buy, for an even worse reason that they hold back their purchasing power so as to convert it into “interest-seeking loans”.

The benefit of interest which you speak of is that under its pressure a businessman is forced to avoid wasteful investment of capital and utilizes it in more profitable ventures. And the nobleness of interest which you cherish is that it silently guides business and it is the “munificence” of interest that the capital sorts out and chooses the best of all businesses that appears most profitable. But just dig deeper into what you just said and take a look at the underlying reality. In fact, the first purpose served by interest is that all other “explanations” of “profit” and “benefit” got abundant by its “munificence” and only one

meaning remained ("monetary profit") and "material benefit"). In this way to a large extent capital only received a single direction to flow. Previously, it would flow in some other directions where there were other benefits besides monetary profit. But now, it moves only in the direction of assured monetary profits to sustain its position in the economy.

Then the second purpose which interest serves through its "rate" is that it makes profit for the capitalist and not for the overall good of society as the sole criteria for effective utilization of capital. The interest rate decides that capital would be invested in those enterprises which would bring for example 6% or more profit annually to the capitalist. No other business venture deserves to get this capital which would bring profit less than this. Now, let us suppose that the capitalist is presented a scheme (for investment) that houses be constructed which would not only be comfortable to live in but also affordable to the poor. Another scheme which comes forth is to construct a grand cinema theatre. The first scheme gives hope of a petty 6% profit while the other scheme promises much more than that. Earlier there was a possibility that capital might have flown towards the first scheme only out of "sheer altruism" or the capitalist might have at least hesitated to choose between the two options and felt the need to do "istikhara" (a prayer performed to seek the opinion of Allah). But it is the "munificence" of the interest rate that guides the capitalist without any hesitation, towards the second scheme and he throws out the first scheme with such contempt and scorn that he does not want to ever consider supporting it again. An added "nobleness" of the interest rate is that it forces the businessman to keep increasing the profit by all possible means (fair or foul) beyond the expectation of the capitalist, even if has to resort to any kind of immoral ways to achieve his goal. For instance, someone has a film production company and 6% is the annual interest charged over the capital invested. He is therefore forced to employ such means that would bring more profit in the business than the interest rate charged for the

I credit he received for his project. If this objective is not achieved by making films which are morally pure and intellectually beneficial, then he would be compelled to use nudity and pornography and to promote them with such advertisements which incite the sexual passions of the masses thereby getting a bigger audience and making more and more money at the box-office.

This is the reality of the benefits which in your sight are accrued from interest and whose realization is not possible without interest. Now, let us also examine this so called "necessity" which cannot be met without 'interest'. Undoubtedly taking a loan is one of the necessities of human life. It is required for satisfying ones personal needs. There is always a demand for it in industry, trade, agriculture and other economic activities. And every public institution including government requires loans. But it is totally wrong to say that it is impossible to provide loan without interest. Since interest is legally permissible, we have a situation in which no one right from an individual to the nation can get a loan without interest. Just make it unlawful, and embrace the system of morality suggested by Islam in your economy, and you will see yourselves that loans can be provided without interest for personal, commercial and social purposes. In fact gifts too could be given. Islam has proved it in practice. For centuries, Muslim society has run its economy in an excellent manner without the prevalence of interest. Before the dawn of your ill-fated usurious era, never was Muslim society in a condition where a Muslim's dead body laid without a shroud, just because his heirs could not find a loan without interest. Never did trade, industry and agriculture under Muslim rule suffer setbacks just because the supply of goodly-loans became impossible as per the business needs. Never did the Muslim government fail to carry out welfare works and military expeditions just because the nation was not ready to give money to its government without charging interest. Therefore, your claim that a goodly-loan is not practical and the edifice of

magnanimity, gracefulness, virtue etc. And these qualities keep blossoming in a person who treads this path continuously. Is there any person in the world who will not testify that the latter process is better than the former amongst these two mental processes?

Cultural and Social Damages

Now look at it from a 'social' and 'cultural' perspective. A little reflection makes it easy to understand that in a society where people behave selfishly and no one extends a helping hand to the other without any selfish motive and the greed for personal benefit, the 'need' of one person becomes an opportunity for the other. In such a materialistic society the benefits of the rich are antagonistic to the benefits of the poor and they cannot reconcile. The pillars of such a society always tend to disintegrate. And if other factors act as a catalyst then it would be no surprise if its pillars and parts clash and collide with each other. As opposed to this, when the social system of society is based on sympathy, its people behave with generosity with each other, extend help to each other at the time of distress and its rich sympathetically assist or at least cooperate with the poor according to requirements. The healthy attributes of mutual love and welfare grow and develop in such a society. Its organs and parts are woven together like a fabric. No internal dispute and clash gets any chance to grow and fester. In such a society economic development would be faster than the other societies, due to mutual cooperation and a spirit of welfare amongst its members.

Similar is the case with international relations. If a nation conducts its affairs with other nations with generosity and sympathy and extends its help with an open heart in times of distress, then the only possible response would be love, gratitude and sincere welfare. As opposed to this, if a nation behaves selfishly and cold-heartedly with the other nations and takes advantage of its problems then it is possible that such a

nation might make a lot of monetary profit, but it would never be possible for such a "Shylock" kind of nation to earn the love, sincerity and respect of the other nations. Not long back in the World War II, England took a heavy debt from America in a conference popularly known as the "Bretton Woods Agreement". England wanted from its prosperous friend, who was also its ally in the war to give her loan without interest. But America did not agree to forego the interest. And England was forced to pay interest due to her financial problems. The impact of this deal on that nation could be gauged from the writings and speeches which were pouring out profusely from the pens of the then strategists and journalists of England.

When the famous economist John Maynard Keynes, who represented England in that agreement, returned home after completing his mission, he addressed the House of Lords saying "I can never forget for my entire life that America did not agree to give us an interest-free loan". Even an avid lover of America Mr. Churchill said "We were treated (by America) in a purely business manner... I see great danger in it. To tell the truth, this will have a very negative impact on our mutual relations". The then finance minister Dr. Danton while presenting this deal in the Parliament for approval said that: "this heavy burden that we are loading unto ourselves after coming out from this War is a very strange reward for our sacrifices made and the anguish suffered for the common goal (of defeating the Fascists). Only the historian of the next era can judge over this strangely oppressive reward. We requested them to give us a goodly loan, but they replied by saying that this is not the way politics works"!

This is the natural impact of interest and its inevitable psychological reaction which would always manifest in every situation whether it is between individuals or nations. The people of England were not ready to believe or even today they do not believe that interest is a wicked thing in transactions between individuals. You talk to an Englishman about interest free loan and he would instantly reply that this is not how

of its responsibility. Society does not feel its need. Banks finance only those ventures where the transaction value runs in millions and billions. And anyway it is not possible for every person of limited resources to reach the bank and acquire loans to meet his immediate necessity.

Due to these reasons, the labourer, the farmer, the small businessman, the low salaried employee and the common man in every country during difficult times is forced to go to those private money lenders who are found easily in the neighbourhood hovering like vultures over carcass. They charge such a huge amount from their debtors with such a high rate of interest in this business, that once a person gets entangled in this cobweb of interest based loan, he cannot free himself from its clutches. Rather it often happens that the debt of the grandfather keeps on transferring to the grandchildren as legacy and even after repaying the interest, the actual principal amount still remains a constant financial unpaid burden. And it happens quite frequently that when the debtor is unable to repay the interest for a period of time then by including the interest into the principal amount, that same money lender, in order to retrieve his principal amount and interest, grants a bigger loan to the borrower with greater interest rate and that poor man is now over burdened by this debt. In England the least rate of interest prevalent in this business is 48% per annum, which is backed by law. But in England the rate commonly oscillates from 250% to 400% per annum, with such examples also to be found where the transactions were done on 1200% to 1300 % per annum. In America, the legal rate of interest charged by the private money lender is 30% to 60% per annum but the usual rate charged nowadays is from 100% to 260% per annum. This rate sometimes reaches up to 480%. In our own subcontinent, the money lender who gives loan to a poor person at 48% is considered to be very good-natured otherwise the usual rate is 75% per annum which frequently touches 150% and at times 300% to 350%.

This is that great evil which has engulfed a large number of people from the lower and middle class. Due to this a substantial portion of their income goes to the money-lenders. After working tirelessly day and night, when they pay interest to the money lender from the meager salary or wages they receive it leaves them with so little that it makes it difficult for them to buy even two square meals a day. This not only destroys their morals but also pushes them towards crime. It not only reduces their standard of living and the standard of education they can impart to their children but one of its most deadly effects is, due to constant anxiety and stress over its payment, it severely reduces the worker's capacity to work hard. When they see that someone else is enjoying the fruit of their hard earned labour, they begin to lose interest in their profession and ultimately all their motivation to work hard fades away. Thus this money lending business is not only a travesty of justice but it also causes great damage to the economy. How strange and irrational it is, that the people who are the real producers and who generate the entire wealth and prosperity of the nation, are meted out such a treatment that blood sucking leaches (private money lenders) are imposed over them who weaken them by sucking their blood out. Just try to estimate the loss of millions of man-hours due to malaria and resultant reduction in the national economic production. To counter that threat you launch an attack on the mosquitoes and try to eradicate them, but you do not estimate that how much your blood sucking money lenders bother millions of your workers, how they de-motivate and depress them, how they make them lose their will-power to work and reduce their productive energy? You fail to estimate how great an impact this has on your economy and productivity? And your false sense of logic is so bizarre that instead of eradicating these money-lenders, you catch hold of the debtors and your courts squeeze out even the last drop of blood which the money-lenders failed to suck out.

The second economic damage caused by interest is that in this way even the little remaining purchasing power of the lower class is snatched by the blood-sucking money-lenders. Already millions of lost jobs and billions in inadequate earnings pose huge obstacles to the growth of trade and industry. On top of that you have shown people with "sound" salaries the way to hoard wealth and not to spend it. Thus business gets a double hit. Over and above all this is the fact that whatever little purchasing power these teeming millions have in the form of insufficient salaries and wages cannot be used to buy the bare necessities of life. In fact a large portion of it is snatched away by the money-lenders and instead of buying goods and services these poor debtors burden the society with even more interest-seeking loans.

Please pause for a moment and reflect. There are fifty million people in the world who are trapped in the cobweb of the money-lenders and they are paying Rs. 10 every month on an average. This means that commodities half a billion rupees worth are not sold and such a huge amount of money instead of turning to production is used in creating more interest-based loans.

Commercial loans

Now take a look at the economic damages caused by the interest charged over commercial loans. The stability and growth of industry, trade, agriculture and all other economic activities demands that whenever people participate in any business, they must all be concerned with its growth and consolidation. Any loss in their business is everybody's loss;

¹⁰ It is worth mentioning here that in 1945 before the partition of India, it was estimated that the money-lending business accounted for Rs. 10 billion. This is only about one country. From this, it can be estimated how large the total amount of these types of loans might have reached in the world and just how much amount of money these money lenders might have earned given the interest rate prevalent in this kind of business.

they must all work together to mitigate this danger. And if business benefits then all are benefited. They must apply all their energies to make growth happen. Accordingly, economic benefit demands that those who participate in the business, not as intellectual or manual workers, but as business partners, providing capital, must also be concerned with what is good and bad for the business and they must be fully concerned with its growth, progress and it is their bounden duty to save the business from possible risks and losses. But when the law legalized interest, it opened the doors for the capitalist to participate in the business not as an associate or a partner but as a lender giving loan over a fixed percentage of profit to be received no matter how badly the business fared. Thus a strange, unnatural factor got involved in the economic process of society which was least bothered about what is good and bad for this entire process, completely at odds with all other factors of production. If the business encounters losses the lender's profit is still guaranteed. Normally a business partner tries to stop any possible damages and losses likely to be incurred by business but the capitalist lender is not bothered even if the business reaches the brink of bankruptcy. If the company's bottom-line goes in red, he will not offer to help the business out, but to save his profits, would simply pull out his invested money. He will not be directly interested to promote the process of economic production. Because his profit is fixed in any case, then why should he bother about the progress and success of this work? In short, irrespective of the profit and loss the society faces, this indifferent factor stays away at a distance, leases out his money and keeps on receiving the rent without any problem.

This incorrect methodology is responsible for the very unhealthy and selfish relationship between capital and business which should actually have been very cordial and sympathetic. The people who are merely looking at locking their money by loaning it for economic production neither do any business with this money nor involve others as business-partners. They

just want loan this money with a fixed and guaranteed profit and that too at the highest rate possible. Of its innumerable damages, some are given below:-

1. A large portion of capital is held back waiting for fixed interest to be earned instead of being utilized in some beneficial business enterprise. Although there are a lot of useful resources in the market (entrepreneurs who can set the market rolling with their innovation and creativity) with many people struggling to find jobs (because of low growth of trade and industry in the face of credit crunch), rising demand for necessary commodities in the market (because of supply deficit) and yet after all this, neither are the resources utilized properly, nor is there employment nor is there any consumption as per the real demand in the market. Just because the capitalist does not expect to make profit from the current market rate of interest that he has determined. Thus the capitalist does not invest his capital (denying the market with the much required funds for investment).
2. It is solely on the rate of interest that a capitalist releases or blocks the flow of funds. Investment is not according to the real and natural demand for funds but in accordance with his own (requirements of) profit. The damage thus caused is exactly similar to the damage caused by the owner of a river, who releases or blocks the water to the fields and gardens according to the demand for the water. His policy is that when there is no demand for water, he releases large quantities at a lower price and as soon as the demand for water starts increasing, he begins to increase its price to the extent that it would not become profitable to buy water at such a price and use it in the gardens and fields.
3. It is because of interest and its exorbitantly high 'rate' that the system of trade and industry, instead of running in a smooth manner, is afflicted with the disease of "trade/business cycle" resulting in frequent fits of

the depression. We have already explained it in the earlier chapters and hence there is no need to repeat it here.

4. Then again, it is also one of the unique characteristics of interest that capital is not willing to be diverted towards those enterprises which are beneficial and required for the best "public interest"; as from a financial point of view, those avenues of investment of capital are not quite profitable and do not yield profit at the rate which surpasses the market rate of interest.

On the contrary, capital flows to the unnecessary but more profitable enterprises and here too, it compels the workers to employ all kinds of means, right or wrong in order to make profit, that is greater than the prevalent market interest rate. We have explained this type of damage before and hence there is no need to repeat it here.

5. Capitalists avoid to invest capital for longer periods of time because on one hand, they always want to keep a considerable amount of capital to use it in market speculation and on the other hand, they also realize that if at any time in the future, the interest rates rise, then in such a case, blocking money in business for longer periods of time would be unprofitable. The consequences of this attitude are that businessmen and industrialists take a very conservative and protectionist approach to business. And instead of making continuous improvement, they settle on low quality enterprises. Because of short term investment of the capital, it becomes difficult for them to purchase new and better equipment and machines for their industries. Rather, they are compelled to dump the market with products made of old and worn out machines so that they could pay the interest, the loan and make some profit for themselves.

This is also a blessing of short term loans that by anticipating the diminishing demand for the goods, in the market, the industrialist decreases the production and

doesn't dare to keep the production speed constant even for some period of time as he would be facing the risk of bankruptcy in case the prices of the goods fall in the market.

6. Again, charging interest with a specific rate for the capital given to the large industries and big traders for long term loans could lead to bigger losses. Loans such as these are received / taken for a period of 10, 20 or 30 years and a specific annual interest rate is decided at the outset itself. At the time of deciding the rate of interest, this fact is not taken into consideration and it is impossible to do so, unless they have knowledge of the Unseen that what form would the prices take during these 10, 20 or 30 years of time and what would be the extent of profit and loss for the borrower? Suppose, in 1949, a person took a heavy loan on 7% annual interest rate for a period of 20 years and invested it in a large business. Now he is compelled to pay the interest and installment of the principal amount with regularity till 1969 according to the rate decided in 1949. By the year 1955 if the prices have fallen down to half of the then prices, then it means that if he fails to sell twice the number of goods relative to the time the agreement was signed, then neither will he pay the interest over the principal amount nor its installment. In an era where the prices are sky rocketing, most of these debtors either get bankrupt or in order to save them from bankruptcy, resort to unlawful means that damage the economic system. If a little thought is given to this, then there could remain no doubt for a reasonable person to conclude, that the profit demanded by the capitalist to remain fixed and constant despite the variations in the prices for different periods of time, is neither just and fair, nor could it be proved correct in the light of economic principles and collective welfare. Have you ever heard anywhere in the world that a company which has taken a contract to manufacture one of the essential

commodities would sign an agreement to provide the customer with its products for the next 20 or 30 years at the same price as decided at the time of manufacturing? If this is not possible for deals of long duration, then why should the "interest-charging-money-lending-capitalist" be that unique dealer, who decides the price of his loan beforehand for years and keep on receiving it?

Government / Public Debts

Now take those loans which the governments take from their own people in order to meet their requirements. Some are taken for welfare purposes and others for profitable purposes.

With respect to the nature of interest charged over the first type of loans, it is charged in the same manner as personal loans. Rather it is worse. This implies that the society which gave birth to a person, nourished him, enabled him to do work and earn, protected him from dangers, saved him from losses with its cultural, political and economic system providing all required services to him because of which he could run his business with peace and security, but when this very society needs funding for its welfare, he refuses to give any loan without charging interest and tells his own society-cum-mentor that whether you could make any profit or not, but, I would most certainly want my share every year as remuneration.

This situation worsens at the time when the nation is at war. Now it becomes a question of the safety and security of life, property and honour of everybody including the capitalist. In times like this, whatever the treasury spends, is not invested in any business, but burned in the flames of war. There is no question of profit. This money is spent in that work, on the success and failure of which depends the life and death of the entire nation including the capitalist. And every member of the nation would spend his life, time and efforts at this hour, and no one would ask the question as to how much profit would

one get annually for the part played by him/her? But in the entire nation, it is the capitalist who puts a condition before giving his money that he should be getting such and such amount of profit over every Rs.100 spent and should be getting his profit until the entire nation repays his principal amount even if it takes a century. And he should be getting his profit from the pockets of even those who, for the protection of the country, have lost their limbs, lost their sons, fathers, brothers and husbands.¹¹ The question that begs an answer is: Does such a class of money lenders deserve to be nourished by feeding them with 'interest' or they deserve to be killed with poisonous pills given to kill stray dogs?

The nature of the second type of loans is no different from the commercial loans. Hence, all those objections are valid for this type of loans too which we have discussed earlier regarding commercial loans. Generally governments take long-terms loans to invest in profitable enterprises. But at the time of taking loans, no government can anticipate the internal conditions of the country and the international situation in next 20 or 30 years, and the condition of the profitability of the projects for which government has taken this interest-based loan. Most of the time, the estimations of governments are wrong and that project in question doesn't yield benefits on par with the interest rate, let alone getting more. This is the one among the other major factors due to which governments had to face problems and already it is becoming difficult for them to pay the original interest let alone investing more capital in any profitable ventures.

¹¹ Here, it would be interesting to know that people of England are still paying the interest to their Capitalists over the loans taken by their elders to fight against Napoleon a hundred years ago. And the people of America have paid four times the amount up until now, which were taken to meet the expenses of the American Civil war [1861-1865]. And even now they are bound to pay an extra amount of approximately one billion dollars of both interest and principal amount.

In addition to this, government faces another situation towards which we have already indicated many times that the market rate of interest sets such a high standard of guaranteed rate of return that capital is then diverted from all those welfare and beneficial projects as their rate of return is less than the prevalent rate of interest. Projects and schemes as housing, making the barren land cultivable by making arrangements for irrigation in dry areas, constructing roads, supplying electricity, launching health schemes for rural areas, constructing houses for meager-salaried employees and other such works however necessary they might be to the public, and irrespective of the amount of loss caused to the country and the nation in their absence, the government does not invest in them unless they yield profit equal to or more than current interest rate. The reality of these projects in which the government invests capital by taking interest-based loans is that it puts the burden of interest on the common man. Interest is extracted either directly or indirectly through taxes and paid to the capitalists for years. For instance, suppose a Rs 50 million irrigation scheme is launched and this capital is borrowed at the rate of 6% per annum, then, the government has to pay Rs. 3 million per year. Now obviously no government can generate that much amount by digging up land. Therefore, it puts this burden over those landlords who make profit from this irrigation scheme. Every landlord will be levied with this irrigation tax and a portion reserved for the interest will be included in it. And the landlord himself would not pay this interest from his own community or group, but rather includes it in the food prices. In this way, interest will be shelled out directly from the pocket of every person who eats this food. From every poor person, a piece of their meal is thus definitely extracted indirectly and fed to the capitalist who gave a loan for this scheme at the rate of Rs 3 million per year. Even if it takes 50 years for the government to clear the debt, it would most certainly do its duty of collecting charity from the poor and

help out the rich. All through this duty, its position will not be much different from that of an accountant.

This process diverts the flow of wealth in the economy from the poor to the rich. And as a matter of fact, the prosperity of society requires the exact reverse of this process namely: that money should flow from rich to the poor. This flow is not just specific to interest which the government pays for the loans taken for welfare schemes. but it pervades all those interest-based transactions by businessmen. Obviously, no trader or industrialist or landlord, would absorb this amount paid as interest to pay the capitalist. All of them include it in the prices and in this way collect charity from ordinary people and fill the coffers of millionaires and billionaires. In this upside-down (reverse) system, the biggest capitalist of the country becomes the most deserving person to receive "help". And the obligation to help this 'deserving' capitalist rests on the shoulders of every citizen of the country who is obliged to toil hard with his sweat and blood even if it is at the cost of providing bread and butter to his starving children. A portion of that food is thus reserved and procured for country's most "poor" billionaire!

Sovereign debts

Our last category includes those loans which the government takes from foreign money-lenders. These types of loans are generally characterized by huge amounts, often running in billions. Usually, the government takes such type of (development) loans only when their countries are faced with extraordinary problems and difficulties, and the financial resources of the country are insufficient to tackle and solve those issues. And at times they are tempted to assume that if they take such loans and invest them in constructive projects, their resources would develop quickly. The interest rate charged over such loans is from 6% to 10% which amounts to millions or billions per year. Investors and money-lenders of

the international money market involve their governments and through them, give loans to the foreign government and as collateral to the loans they take any one of revenues like terminal taxes, tobacco, sugar, salt etc.

These kind of interest-based loans are responsible for all those wrongs which were mentioned earlier. All the damages caused by personal, commercial and national loans are also caused by this type of foreign loans therefore there is no need to repeat them. But this type of loan carries another risk more dreadful than the above mentioned and it is that the monetary status and the economic situation of nations are destroyed by these loans thus having a terrible impact on the world economy. This sows the seeds of hatred and animosity which would ultimately result in a frustrated young generation. These disturbed nations then start accepting extremist political, cultural and economic philosophies and begin to search for the solution to their national problems in bloody revolutions or in destructive wars. Obviously, how could a nation meet its own requirements or solve its own problems when it is falling short of financial resources and finding it difficult to pay Rs 5 million or Rs 10 million every year as interest besides the installment of the principal amount? When the international capitalists have already secured for them one of the biggest sources of revenue of the nation and clipped its wings financially (then what economic progress can we expect)? That is the reason; nations which resort to such foreign loans seldom solve their problems. On the contrary, most of the times, these loans cause more problems. To pay the loan-installments and the associated interest, the government levies very heavy taxes on the people and reduces the government spending to the minimum. Owing to which on one hand, people become restless for they do not get the welfare and incentives corresponding to what they contribute by way of taxes. On the other hand it becomes difficult for the government of the day to keep paying the installments and the interest without raising taxes and reducing subsidies and welfare. When this debt-

ridden country defaults on its foreign debts, then the foreign investors start accusing the government of being dishonest and corrupt. On their directions, the foreign media launches scathing attacks on that poor country. Then these foreign governments interfere in support of its capitalists and not only put political pressure on this country but also try to take advantage of its problems. The debt-ridden nation desperately tries to free itself from this vicious trap by increasing taxes and cutting the government spending. But the impact of this ever increasing load of economic problems produces bitterness in the people's behaviour. Under constant pressure from the foreign investors and governments, they become more distraught, fly into fits of rage against their more moderate policy makers, and by disregarding their moderates start following those extremist gamblers who in one single stroke exonerate themselves from all the loans and haughtily challenge the powers to fulfill their list of claims and demands.

Here, the corruption and evil of interest reaches its zenith. Now, even after all this, could there be anyone who would hesitate to declare interest an absolutely forbidden thing? After seeing all the damages and consequences of interest, could there be anyone who would doubt the guidance of Prophet Muhammad (pbuh) who said that: الرّبّاسُوْنَ جزأً اِسْرَهَا اَن يَنْكُحَ الْرَّجُلُ اَمْهُ "Interest is such a big sin, that if it is broken into 70 parts, then its lightest weight would be equal to the sin of a person committing incest with his mother. (Bayhaqi, Ibn Majah)

MODERN BANKING

But, the topic of "how repulsive is interest" does not end here. This scourge has magnified its ugliness manifold times, and has recently morphed itself from the old ways of usury and money lending to modern day banking. This bane dislodged the old moneylender's cashier from his place and installed the modern day banker and financier in whose hands interest became the most destructive weapon of all time.

Early History

To understand the nature of this new money-lending business, it is necessary to have its early history before us.

The history of modern banking in the western countries begins with the time when there was no paper currency; people used to accumulate their wealth in the form of gold and deposit it with goldsmiths for safety and security instead of keeping those valuables at home. Commensurate with the quantum of deposit, the goldsmith used to write down a receipt of gold declaring that such and such amount of gold of this receipt holder is safely deposited at so and so goldsmith. Gradually, these receipts began to be used for exchange from person to person in buying, selling, lending, borrowing and settlement of financial accounts. It was convenient and easy for people to give and take the gold receipt from each other, than to withdraw gold from the goldsmith each time there was a transaction. Business began to be carried in this way; handing over the gold receipt (made of paper) implied the physical handing over the gold itself and hence for all practical purposes these receipts represented the real gold and seldom did an occasion arise when the people actually withdrew their gold safely deposited with the goldsmith. The only time when such

a situation would arise was when there was an actual need for using the gold itself. Otherwise as a means for exchange, these light weight receipts (made of paper) were sufficient to run the business and whose possession signified the real possession of an equivalent amount of gold.

Soon the goldsmiths realized that, of the entire gold deposited with them, very rarely was a single portion withdrawn by the public. The rest always remained with them in the safety of the lockers and vaults. They thought: why should these remaining nine portions of the deposits remain unutilized? So they started giving gold as loans and charging interest over them. And in this way, they utilized the gold in such a way as if they were their real owners; whereas it belonged to the people. More interesting is the fact, that they charged remuneration over the deposited gold from the public because of the protection they offered and slowly and subtly gave that very gold to the people along with the interest.

But then again, their diabolical schemes and treachery did not stop there. Rather than the actual gold, they began loaning the paper receipts which were backed by the gold deposits. They were able to do so because in any case their gold receipts were performing all those transactions which used to be performed by physical gold that was hitherto the monetary medium of exchange. And since they knew from experience, that it was generally the tenth part of the deposited gold which was demanded back, they began issuing and loaning on the strength of those 9 remaining parts not 9 but 90 fake paper money bills. You may understand this from the following example: A person deposits Rs 100 of gold. The goldsmith makes 10 receipts of Rs 100 each and writes on every receipt that it is equal to Rs 100 of the gold deposited with me. Out of these receipts, the one which is actually equal to gold is handed over to the real depositor, and the remaining 9 receipts which are not equal to the said gold, are loaned to the people charged with interest.

Obviously this is the dirtiest kind of treachery and deceit. By means of this deceit and forgery, they made 90% of absolutely baseless and fake currency and without any justification whatsoever, became its owners and by burdening the society with it in the form of loan and began charging 10-12% interest over it. In fact, they had neither earned this money, nor had they any right to own it and nor was it real money. Hence, making it the medium of exchange to be used in the market in return for goods and services is totally wrong and unjustified from ethical, economical and legal perspectives. Hence, when the common man hears these heinous acts, the provisions of penal code related to deceit, fraud, forgery and other similar crimes come to his mind and after that the common man thinks that probably these goldsmiths were tried in a court of law for fraud and deception. But what happened was completely opposite to his expectations. These goldsmiths became the owners of 90% of the wealth due to their forgery. Kings, princes, ministers and everyone already got trapped in their web of debts. Already the government had borrowed heavily from these moneylenders during times of war and to quell their internal disturbances. Now, who could have the courage to ask how these people became the owners of such large capital?

As we have explained in our book "Islam and Modern Economic Theories" those opposing the old feudal order and representing a new bourgeois culture, armed with powerful weapons of freedom, democracy and vast resources during the renaissance were none other than these very money-lenders and merchants. With their backing, a huge army of philosophers, artists and litterateurs were ready to attack anyone dared to investigate the source of "Mr. Goldsmith's" wealth. So, in this way, not only did the wealth created out of fraudulence and forgery remain elusive from the law, but the law itself made interest legal and the government recognized the right of these goldsmiths, who are now known as bankers.

and financiers, to issue the (gold) receipts and to officially circulate this paper-money in the business world.

Second Stage

This is the reality of the money through which the old goldsmiths became modern day bankers and the owners of huge and expensive property. After this, they took another step which was even more damaging than the earlier one. The era in which this new money-lending business, deriving its power from that fake capital, was on the ascent was also the same era in which industry and trade was coming up like a huge tidal wave in Western Europe. This wave of industrialization appeared to sweep the entire world on one hand, and on the other hand bring about a new edifice of culture and civilization from universities to municipalities aiming to recreate every department and domain of the nation and civilization. At this point of history, every kind of economic and cultural reconstruction was in need of capital, new industries and trades required capital, especially when they were in their startup phase. The established businesses demanded capital in ever-increasing amounts for their growth and development. All individual endeavors and public projects required capital for the establishment and nurture of culture and civilization. For all these tasks, mere labour was insufficient. Thus the only avenues for procuring resources required to foster and develop the youth of this modern civilization were:-

1. Capital which was with the former goldsmith and now with present day money-lenders.
2. The capital of the middle and upper class in the form of their savings.

Of these, the first type of capital was already in the possession of the money-lenders, and they were already habituated to charging interest. That is why not even a tiny portion of this money was available to be utilized along the

lines of profit sharing / partnership. In this way, whatever the money these industrialists, businessmen and other economic and cultural entrepreneurs received, they got it as a loan on the condition that irrespective of profit or loss and irrespective of the quantum of profit generated, in all cases, these money-lenders demanded profit in accordance with a specified fixed rate.

After this, came the second avenue from which clean money could be extracted to fund trade, construction and development projects. These money-lenders hatched a clever plot by which they acquired control of this avenue (of resource provision) too and which closed all the doors for funding the social and economic necessities except by "way of interest". And the scheme was that they gradually started attracting funds from all those who saved a part of their income which was actually barely sufficient to meet their needs or who saved from their income by sometimes even cutting down their needs. You know money-lending goldsmiths were quite close to the public as their savings were deposited with them. When they saw that these people were using their capital in buying shares of companies instead of depositing it with them they started telling them not to bother about investing their funds here and there. They told them "(if you carry out all the investment activities by yourself) you will have to involve yourselves directly in taking those risky investment decisions, you will have to check their performance and more than that you would be at risk of losing the profit or the business by investing your funds by yourself. They frightened them by saying "the variance in profit and loss (because of investing as a business partner) will seriously impact your income and rate of return. Instead of all that why don't you deposit your money with us? We will protect your money without charging any fee, we will maintain the account for free and instead of taking anything from you we will give you interest over it.

This was the scheme because of which 90% or more savings went directly into the hands of the money-lenders instead of entering core business and economic activity. These money-lenders started controlling nearly all of the deposited capital. Now the situation which emerged from this plot was that besides the fake currency which the money-lender was already using, he also got control over peoples deposits by taking it on lower rate and loaning it with higher rate. He made it impossible for anyone to get the capital invested in any enterprise on any condition without his approved rate of interest. Even the few remaining people who preferred to invest their money directly in the business instead of depositing with the money-lenders, got the taste of receiving fixed amount of profit and instead of buying shares, they preferred debentures which guarantee a specific amount of profit.

This is how the division of society was completed. On one side was a large populace who worked hard to run the wheels of the economy and civilization. The entire culture and economic output depended upon on their efforts and endeavors. And on the other side was a small populace that was responsible for supplying the fuel to drive those wheels. The owners of the fuel refuse to befriend and cooperate with the owners of the wheels and they follow a policy that negates the concept of using this fuel for the collective benefit of the public, but only for their own selfish monetary benefit.

The above division of society also proved that this nascent western civilization which was going to be the dominant and ruling civilization of the future is purely materialistic in nature. And it can also be concluded that in this civilization, interest rate is the standard by which everything is measured and valued. Analogically the entire harvest of civilization depends on the life-giving water of capital and the monetary value of every drop of this water (of capital) is determined by rate of interest for credit in the market. Therefore, in this entire

harvest of civilization, if there is anything worthy and deserving of appreciation, it is to bring itself, either directly or indirectly to at least to the (profit) level, in the form of the rate of interest, which is set by the great leader of this bourgeoisie civilization - "The Banker"!

This method brought to an end the era of the pen and the sword and established in its place, the supremacy of bank accounts. Everyone from the poor farmers and labourers to the biggest industrial and business establishments and even the most powerful governments and kingdoms came under the invisible reins of these bankers.

Third Stage

Later this group took another step and fashioned its business into a new form which goes by its popular name - the Modern Banking System. Previously they used to do it individually although there were some money-lenders who took their family business to great heights and erected great banking empires, whose branches were established in the remote areas of the world; they were still individual family manages businesses. Then they realized that just as corporations and companies were being established in various sectors of the economy, their own companies in the money lending business must also organize themselves similarly. In this way, banks came into existence which today control and govern the financial system of the world.

The working methodology of this organization is that a few wealthy people establish an institution of money-lending called a bank. Two types of capital are used in this institution. The first is the capital coming from its shareholders with which its business is launched. Second is the capital of the ordinary depositors who keep increasing with the popularity and the work of the bank and which helps the bank increase its power and influence. The true measure of a bank's success today is

that its own capital (i.e. the capital of the shareholders) should be as small as possible and the depositor's capital should be as large as possible. For example, the Punjab National Bank, which was among the most successful banks prior to the partition of India, its own capital was only Rs 10 million of which Rs 8 million or more was paid by its shareholders. But in 1945, this bank was using approximately Rs 520 million of the depositor's capital.

But the interesting point is that although banks run their business by using the depositor's money which accounts for 90-95% or sometimes 98% of the overall capital of the bank, but they still do not offer their depositors any say in their management, administration and policy-making. That is totally in the hands of those shareholders who are the owners of the bank and who hold only 4-5% of the overall capital. The job of the depositors is only to give away their money and receive interest at a fixed rate. As for how the bank would use their money is not of their concern but of the shareholders. It is they who are the management, it is they who make the policy, supervise the accounts and the bank is totally dependent on their will, in terms of where the money ought to go and where not to. Then the shareholders too are not all equal. This medley of smaller shareholder's influence is very nominal. In fact, it is the bigger shareholders who control the bank and it is they who exploit it.

It cannot be denied that banks do perform some big and small roles, some of which are necessary and lawful, but the core job of banks remains to loan money on interest. Be it commercial banks or industrial or agricultural banks, they themselves do not participate in trade or industry or agriculture, but rather the banks offer loans to businessmen and charges interest over it. The real and biggest source of their profit is because they collect funds from their depositors at

lower interest rates and then loans it to the entrepreneurs with a higher rate of interest.¹²

¹² It appears appropriate here to shed some light on the working methodology of banks so that people could understand the reality of their business. The deposits made in the bank can be divided into two broad categories: Fixed and Current. The first type of deposit is made for a period of three months or more. One may keep withdrawing money from the second kind of deposit. The rule of the bank is that longer the period of deposit higher would the interest be received. And as the period decreases so does the rate of interest. Some banks also give a nominal interest over current account, but in general there is no such rule, rather the bank charges fee for maintaining the accounts of those who frequently withdraw their amounts and demands of them to deposit a permanent minimum deposit in a specific proportion in order to bear the costs of maintaining their accounts. Banks keep a portion of its capital around 10-25% of cash with itself, which could be used in daily transactions. Then it loans some of the capital to the money market. It is like liquidity for the bank that is always available for utilization and around 0.5-1% interest is charged over it. Then, a portion of it is used in cheques and the other is used for short term loans. Since they are returned quickly, the interest charged is very low, for instance 2-5% or may be more or less. Then quite a significant portion is invested in those enterprises which guarantee the security of invested capital. In case any need arises, it could also be sold to extract the capital out, and then again around 2-4% of the interest could also be charged over it, for example, government securities, shares and debentures of blue chip companies. After liquidity, the main reason for banks to structure its business on these three categories is simply for its own protection and survival. These deposits help the bank's business and are useful at the times of need and danger.

After this, a large category belongs to those loans that are given to entrepreneurs, wealthy people, and social institutions. This is the biggest source of revenue for the bank. Very high rates of interest are charged over these and every bank would want to spend as much of its capital as possible over this category. Generally banks invest around 30-60% of the capital in this category and the percentage may vary based on the economic and political conditions of the world.

From this explanation, it becomes very clear, that the categories in which banks invest its own and the depositor's capital are all intended to seek maximum interest which directly or indirectly burdens the society. And the money which is given to the depositors in the name of "profit" is a part of that very interest over the loans given to society. There is no doubt banks do perform some functions that are of lawful kind and its salaries and

The revenue generated in this way is distributed among the shareholders in the same way as the revenues are appropriately distributed among the shareholders of any business institution.

Consequences

By organizing the money-lending business in such a sophisticated manner, the prestige, influence and the confidence of today's networked money-lenders sky rocketed exponentially and the small individual and disorganized money-lenders of yesterday appear dwarfs and a pale shadow of their contemporary versions. And the most significant thing was that the entire wealth of nations now lay at their feet. Today billions of rupees get accumulated in a single bank. A few influential bankers govern and control those funds through which they control the economic, political and cultural lives of not just their own countries but the entire world and that too with a shocking level of selfishness. This power can be gauged from the fact that before the Partition (of India) the shareholders of India's ten biggest banks had just Rs 170 million while the depositor's money reached upto rupees 1.12 billion. A few bankers were controlling the management and policy of these banks. And these bankers were probably just 200-250 in number. However it was the greed of 'interest' that forced millions of people to deposit such huge amounts of money with these banks and they were least bothered about how these bankers were going to use this powerful weapon (of this huge capital) and for what purpose? Now every person can guess what an immense and powerful influence these bankers might be having on industry, trade, commerce politics, culture and civilization given the huge amounts of money at their disposal, and one can easily gauge whether their influence is working in the favour of the common man or serving their own selfish and vested interest.

commissions are a source of revenue for some people. But it accounts for only 5-10% of the overall revenue of the bank.

This is the situation in a country like India where the mutual collaboration of these money-lenders / bankers is still in its nascent stage and where the per capita deposit is a mere Rs 7/-. Now just compare this figure with countries where this average has reached 1000 or 2000. You can imagine what might be the level of aggregation of wealth in those countries!! According to the records of 1936 the average per capita deposit of the commercial banks in America was 1370 pounds, 1664 pounds in England, 275 in Switzerland, 212 in Germany and 165 in France. You can imagine on what scale the people of these countries are giving away their savings to these bankers? With such a high value of per capita deposit, it means that savings from every house in the country is being concentrated in just a few hands. And they are neither accountable to anyone, nor do they seek advice from anyone except their own selves and nor are they concerned about anything other than their own vested interests. They just pay the "rent" of this huge wealth in the form of interest and then "practically" become its owners. Then, on the strength of this power, they play with the destinies of countries and nations. They create drought wherever they wish, instigate wars whenever they want and make peace accords with whomsoever they desire. They promote things which are beneficial from a purely selfish financial perspective and block and discourage things by all ways and means that do not please them? They not only control the financial markets but also rule the cradles of arts and sciences, the centres of scientific investigation, institutions of journalism, monasteries of religion and the parliaments and governance of nations just to please their friend, philosopher and guide – Mr. Capitalist!!

This is that great ordeal that is giving nightmares to the western intellectuals who are screaming themselves hoarse that the concentration of such huge financial power in the hands of such few irresponsible and selfish people is seriously detrimental to the entire social fabric. But even today in our country, speeches are being made (by our naïve intelligentsia)

that usury was the dirty and forbidden fruit of old moneylenders. Our swanky and plush CEO's of banks are into a very noble business!!! Why should giving and taking of money be considered forbidden only in their business?

But as a matter of fact, the difference between the old and the contemporary money-lenders is that if the old moneylenders would rob people individually, but now the new ones, rob the public by forming large syndicates and consortiums. And the second difference which is perhaps greater than the first is that previously, every one of these thieves used to bring their own tools of burglary and weapons of destruction, but now the entire population of the country due to its stupidity, ignorance and indifference to the law, themselves provide innumerable tools and weapons to these organized robbers on rent. They pay this "rent" in broad daylight to these thieves who rob the same population with their own tools and weapons in the dark. And regarding this "rent", we are told to accept it as lawful and pure!!! How naïve?

ISLAMIC INJUNCTIONS REGARDING INTEREST

The above was the logical aspect of our discussion. Now, let us look at the textual aspect and examine interest in the light of Quran and Sunnah. Let us check its injunctions. Which transactions gain association with interest in Islam and why are they forbidden? What are the principles of Islam that enable it to manage the economy by effacing interest?

The Meaning of *Riba*

In the Holy Quran, the Arabic word used for interest is *Riba*. Its etymology is رب و It comprises the meanings of growth, development, increase and rise. را = It grew and increased. ربلا = He climbed over the hill-top. رباني سوين = He poured water on barley and the barley swelled. رباني جرة = He grew under his care. رب المي = أرب المي = He grew the thing. ربواه = Height/Hill. رباه = Highland.

All the words mentioned in the Quran derived from this root denote increase, growth and height. For example

فِيَذَا آتَنَا لَنَا عَلَيْهَا الْمَاءَ اهْتَرَّتْ وَرَبَّتْ

And you see the earth barren, but when We send down water (rain) on it, it is stirred (to life).. (Surah Hajj: 5)

يَمْحَقُ اللَّهُ الرِّبَا وَيُنْهِي الصَّدَقَاتِ

Allah will destroy Riba (interest) and will give increase for Sadaqat (deeds of charity, alms, etc.)

(Surah Al Baqarah: 276)

فَاحْتَمِلُ السَّيْئَلَ زَبَدًا أَرَابِيًّا

but the flood bears away the foam that mounts up to the surface
(Surah Ra'ad: 17)

فَأَخْذَهُمْ أَخْذَةً رَّابِيَّةً

... so He punished them with a strong punishment.

(Surah Al Ha'aqqa: 10)

أَن تَكُونَ أُمَّةٌ هِيَ أَزْبَى مِنْ أُمَّةٍ

...lest a nation may be more numerous than another nation....
(Surah An Nahl: 92)

أُوْتَهُمْ إِلَى رَبْوَةٍ

And We gave them refuge on high ground

(Surah Al Muminoon: 50)

And from this very root is the word *Riba* which means excess of wealth transgressing the principal amount. Hence the Quran itself has clarified the meaning of this word.

وَذَرُوا مَا يَقْنَعُ مِنَ الرِّبَا وَ...

وَإِن تُبْتُمْ فَلَا كُفْرُ عُوْشَ أَمْوَالُ الْكُفَّارِ

and give up what remains (due to you) from Riba (interest) (from now onward)..... but if you repent, you shall have your capital sums (principal amount)....

(Surah Al Baqarah: 278 - 279)

وَمَا أَتَيْتُمْ مِنْ دِيْنًا لَيَرْبُوْا فِي أَمْوَالِ النَّاسِ فَلَا يَرْبُوْا عِنْدَ اللَّهِ

That which ye give in interest in order that it may increase on (other) people's property hath no increase with Allah.

(Surah Al Room: 39)

It is very obvious from these verses, that whatever excess amount is received or made over this principal amount would be considered *Riba*. But the Quran hasn't forbidden every excess in its absolute sense. There is excess in trade and business. The excess which the Holy Quran forbids excess is of a special kind. That is why it calls it *Al-Riba*. Even in pre-Islamic Arabia, this special kind of transactions was called by this term. But they used to consider *Al-Riba* to be as lawful as

business. As with the case of contemporary *Jaahiliyyah* (the un-Islamic order / state of affairs), Islam also makes a distinction between the excess made from the business and the excess accrued from *Al-Riba*. The first kind of excess is legitimate, whereas the other is unlawful;

ذلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَوِ وَأَخْلَقَ اللَّهُ الْبَيْعَ وَحْرَمَ الرِّبَوْۚ

That is because they say: "Trading is only like Riba (interest)," whereas Allah has permitted trading and forbidden Riba (interest). (Surah Al Baqarah 2:275)

Since, *Al-Riba* was a description for a special kind of excess, and it was well-known and popular, the Holy Quran did not elucidate it and deemed it sufficient to merely state that Allah has forbidden it and hence leave it at that.

The *Riba* of the days of Ignorance

Numerous types of transactions to which the word *Al-Riba* was applied in the era of *Jaahiliyyah* (Ignorance) have been come down to us. Qataadah says regarding the *Riba* of *Jaahiliyyah* (Ignorance) that a person would sell a commodity by offering a fixed time-period for its payment, and if the duration was exceeded and the payment was not made, then he used to give more time but increase its price.

Mujahid says that the *Riba* of *Jaahiliyyah* (Ignorance) was that a person used to borrow the money and say that if I am given such and such time then I would give you such and such extra money. [Ibn Jarir, vol.3 pg. 62]

The research of Abu Bakr Al-Jassas, says that whenever the people of *Jaahiliyyah* (Ignorance) used to make a loan transaction, they used to mutually decide that a certain excess amount would be paid besides the principal one (amount) for such and such period of time. [Ahkaam Al Quran, Vol.1]

According to the research of Imam Razi, it was customary for the people of *Jaahiliyyah* (Ignorance) to loan someone for a

specific period of time and then charge a specific amount on a monthly basis as interest. When the period expires, they would demand the principal amount from the debtor. And if he happens to fail in paying the loan, then he would be offered more time and interest would be raised.

[Tafsir Al-Kabeer, vol.2, pg.351]

These types of business transactions were prevalent in Arabia and it was these to which the Arabs used the word *Al-Riba* in their language. And precisely it was regarding such types of business that the Holy Quran declared forbidden unlawful.¹³

The Fundamental Difference between Trade and Interest

Now take a look at the fundamental difference between trade and interest. What are the typical characteristics of interest which makes it different from trade and on what basis has Islam forbidden it?

The transaction over which the word trade is applied is that the seller presents commodity to the buyer. Then a price is decided between them. And as remuneration for this price, the buyer buys the commodity. This transaction would not be free from two conditions. Either the seller himself has produced it by investing his own capital and labour or he has bought it from someone else. In both of these situations, he charges the price of his labour over the capital which he has invested to either buy or provide the commodity. And this is regarded as his profit.

In contrast to this, the reality of interest is that a person loans a principal amount to another person with a condition that a certain excess amount would be charged over it for a certain specified time-period. In these transactions two things are decided at the very outset of this transaction. First that the

¹³ For detailed discussion, please refer appendices 1 and 2

principal amount has to be returned and secondly the duration of time against which an excess amount is to be paid. This excess amount is called *Al-Riba* or interest, which is not the remuneration for any money or commodity but simply for that of the time-duration. If a certain future price is pre-decided in a business transaction with the condition that a certain extra amount (over the current selling price) would be charged in case of lapse of time, then this excess amount would fall under the definition of interest.

Therefore, the definition of interest would be: "The excess amount charged over the principal amount in a loan against the period of time with a condition and stipulation".

An additional amount over a principal amount, the determination of the additional amount against time-duration and the inclusion of a stipulation are the three parts which constitute interest. All loan transactions in which these three parts are found are interest-based transactions regardless of whether it is for personal or commercial purposes and whether the borrower is rich or poor.

The fundamental differences between interest and trade are:

- i. In a business transaction the exchange of value between the buyer and the seller is based on fairness and justice as the buyer reaps the benefit of the commodity which he purchased from the seller and the seller takes the remuneration of his labour, intelligence, and time invested in providing the commodity to the buyer. In contrast to this, in interest-based transactions, the exchange of value between the lender and the borrower is not according to fairness and justice as the lender would anyhow get his predetermined amount from which he certainly benefits. In contrast to the lender the borrower merely gets a time-duration (respite for paying back) under which profitability is completely uncertain. If the debtor has

borrowed the money to meet his personal needs, then this time-duration does not benefit him, but is in fact detrimental. And if the loan is for agriculture or industry or trade, then as there might be a possibility of profit under the time-duration obtained, but so would be the possibility of loss. However the lender would in any case demand his share of profit, irrespective of the borrower/debtor making a profit or loss. Therefore, interest-based transactions imply those transactions in which one party always enjoys the profit and the other always bears the brunt of loss or one party enjoys a fixed and sure profit and the other uncertain and variable profit.

- ii. However in business / trade irrespective of the quantum of profit by the seller, it is just a one-time amount but in the case of interest the lender continues to receive the profit which keeps on increasing with the passage of time. If the debtor has made profit from the loaned money, his profit would be limited to a specific amount, but as remuneration for the loan, the profit made by the lender would be without any limit. It might happen that the entire earnings of the debtor and all his financial resources might be spent in servicing the debt and still the payment of interest might never come to an end.
- iii. In business / trade the transaction ends with exchange of goods and their payment. After that the buyer has nothing to pay back to the seller, but in the case of interest, the debtor even after paying the principal amount continues paying the lender along with the interest charged.
- iv. In trade, industry, crafts and agriculture a man applies his intellect and labour and reaps benefit, but in interest-based transactions, the lender becomes the dominant partner in other people's earnings without any labour and hard work, merely by loaning his extra money. His position is not of a "business partner" who shares both profit and loss but his position is that of a person who claims his predetermined

and stipulated share without any regard to the actual profit and loss of the business.

The Cause of Prohibition

These are the reasons why Almighty Allah has made business lawful and declared interest to be unlawful. Besides these, there are other reasons which we have indicated earlier. Interest produces stinginess, selfishness, hard heartedness, mercilessness and wealth-worship in people. It creates hatred between nations. It severs the relationships of sympathy and mutual cooperation between the individuals of a society. It generates the proclivity of hoarding wealth and spending it only on personal prosperity. It blocks the free circulation of wealth in the society. It reverses the flow of wealth and directs it from the poor to the rich because of which the wealth of the majority gets accumulated in the hands of a minority. It eventually becomes responsible for destruction of the entire society, as is not hidden some of our visionary economists. All these effects of interest are irrefutable. Also it cannot be denied that every part of the plan which Islam has charted out and designed for the moral development, cultural management and economic organization of man is inconsistent and incompatible with interest. And even the smallest and apparently most innocent type of interest would ruin this plan. That is the reason; Almighty Allah has forbidden interest-based transactions in very stern words:

اتَّقُوا اللَّهَ وَذَرُوا مَا تَرَقَّى مِنَ الرِّبَا إِنَّ كُلَّمُؤْمِنٍ يَعْلَمُ بِمَا يَصْنَعُ ۝

فَإِن لَّمْ تَفْعَلُوا فَأَدْنُوا بِحَزْبٍ مِّنَ اللَّهِ وَرَسُولِهِ ۝

...Be afraid of Allah and give up what remains (due to you) from Riba (interest) (from now onward), if you are (really) believers.

..... And if you do not do it, then take a notice of war from Allah and His Messenger.

(Surah Al Baqarah : 278-279)

The Severity in the Prohibition of Interest

Commandments forbidding many sins occur in the Holy Quran, carrying severe threats. But never were such harsh words used for any sin other than interest¹⁴.

Precisely on this basis, the Prophet (pbuh) worked hard to prohibit interest in all the Islamic territories. In the agreement with the Christians of Najraan, the Prophet (pbuh) stipulated that if you do any interest-based business, then our agreement would be nullified, and we would have to wage war against you. The money-lenders of the Banu Mughira tribe were famous in Arabia for their trade of lending money on interest. After the conquest of Makkah, the Prophet (pbuh) declared all their interest to be null and void and wrote to the Governor of Makkah to wage war against those who do not desist. The Prophet's uncle, Abbas (r) himself was a big money-lender. At his last and farewell Hajj, he declared all interest of *Jaahiliyyah* to be void and the first amount to be annulled was that of his uncle Abbas. The Prophet (pbuh) went to the extent and said that "all those who charge, take, document and witness (*Al Riba*) interest are cursed by Allah!"

All of these injunctions were not intended to prohibit only one specific form of interest - usury and to open the flood gates of all other types of interest but rather, their real objective was to completely destroy the capitalistic ethics, capitalistic mentality and the capitalistic economic and cultural systems and civilization. Islam wants to establish a system where there would be generosity instead of stinginess, sympathy and mutual cooperation instead of selfishness, *Zakat* instead of interest, national treasury (*Bait ul Maal*) instead of a bank and to prevent all those situations which promote usurious cooperative societies, insurance companies and provident

¹⁴ It is mentioned in one of the Hadith that the sin of interest is seventy times greater than committing incest with one's own mother. (Ibn Majah)

funds in a capitalist system and ultimately force people towards the unnatural ideology of Communism.

Now it is because of our naivety, weakness and misfortune that this moral, cultural and economic system of Islam has totally collapsed. Capitalism now dominates us. We did not keep any our institution intact which collects and spends *Zakat* in their proper domains. Our wealthy have become selfish and egoistic. There is no support system for our homeless. We have lost our sense of Islamic morality and transgressed all its limits one by one. We indulge in alcohol, gambling and adultery. Lavishness, extravagance and other such vices have become the hallmark of our lives. We included all the accessories of extravagance and ostentation into the necessities of life. Without interest-based loans, it became impossible for us to marry, to buy cars, construct bungalows, and provide a fancy and fashionable lifestyle. Then the spirit of mutual cooperation and its practical organization evaporated from us. And its consequence was that our economic condition deteriorated. Our lives became totally dependent on our own economic resources and we were forced to abandon the Islamic principles and adopt the principles of Capitalism in order to protect our future. We began to save money in banks, pay premiums to the insurance companies, became members of cooperative societies, and took loans on interest from the capitalists to meet our needs. Undoubtedly all this has now become part and parcel of our lives but is Islam responsible for creating such conditions? If it is not and definitely it is not then the only reason for our sorry state of affairs is because we have brought down every pillar of the economic system taught by Islam. Would it then be legitimate for us to seek a solution by violating one law of Islam for the economic problems which we ourselves have created by disobeying the Islamic Law and then demand from Islam itself to grant us permission to violate its law?

The moot question is: who is stopping us from establishing the organization of *Zakat*? Who is preventing us from following Islamic teachings of support and cooperation? Who is standing in our way from implementing the Islamic law of inheritance? Who is forbidding us from living a life of simplicity, abstinence and prudence? Who is forcing us to exceed our limited budgets for sustenance and include all the extravagant requirements of western culture in our daily necessities? Who made it obligatory for us to abandon the lawful means of livelihood and strive to become capitalists by all means fair and foul? Who has stopped our wealthy from helping their relatives, neighbours, friends, widows, orphans, handicapped and the needy and who is forcing our rich to invest all their wealth in the factories of Europe, America and Japan? Who forced our middle-class and our poor to overspend in weddings and other ceremonies and in a bid to compete with the rich, try to display artificial pomp and ostentation by taking interest based loans for their vanities? All these actions are a crime and a sin in the sight of Islam. If we desist from committing these crimes and once again establish the economic system of Islam, then all our problems can be solved but we cannot prosper if we persist in committing the crime that gives birth to other crimes namely the giving and taking of interest. When a person himself has forsaken the good and pure food and brought himself to a position where he cannot find anything except impure and unclean food to eat as well as feed others, then why should he insist on declaring this impurity to be pure and good? As we have mentioned in the beginning, the question of giving and taking interest comes later, the first thing which has to be decided is that should our economic system be based on Islam or on Capitalism? If you choose the former, then there is no need or any room for interest-based transactions in it, as this (Islamic) system considers the ones who are involved in interest-based transactions to be criminals who damage the economy. In contrast to this, if you opt for the capitalist economic system, then you would be rebelling

against Islam and you will have to give up all the laws of the Islamic economic system that are not compatible with Capitalism. And if you still want to break all the laws of Islam, follow the capitalist system and still do not wish to remain a sinner, then it means that instead of being a follower of Islam, you want Islam to follow you. And you want Islam to change its principles and adopt the principles of the capitalist economic system so that you could remain in its fold.

PERTAINING INTEREST

We have explained it earlier that *Al Riba* refers to that extra amount or profit which the lender charges the borrower over the principal amount as a condition in a loan transaction. In the legal terminology of Islam, it is called as *Riba Al-Nasia* which means the *Riba* which is given and taken on loans. The Quran declared it to be forbidden and unlawful. The entire Ummah concurs with its prohibition. There had never been any doubt regarding this injunction.

But it is also a precept among the many guidelines of Islamic Law that when it decides to prohibit something, it also blocks all the possible ways leading to that. In fact it nips in the bud the very first step leading to that forbidden thing so that man might not even come close to it. The Prophet (pbuh) explained this benefit by a subtle example. In Arabic "Hima" (حِمَة) (meaning protected) is referred to the pasture that a person reserves for his animals and where animals belonging to others are not allowed to graze. The Prophet (pbuh) said that: "Both legal and illegal things are evident but in between them there are doubtful (suspicious) things and most of the people have no knowledge about them. So whoever saves himself from these suspicious things saves his religion and his honour. And whoever indulges in these suspicious things is like a shepherd who grazes (his animals) near the Hima (private pasture) of someone else and at any moment his animals are liable to get in it. (O people!) Beware! Every king has a Hima and the Hima of Allah on the earth are His illegal (forbidden) things". Thus avoiding those matters that lie between the lawful and unlawful is obligatory to protect the Islamic way of life.

It is the Divine Wisdom of Allah that He has fenced off every prohibition with aversion and restraints according to the ease of effort and proximity of access by which the prohibitory acts could have been committed. He imposed either severe or mild sanctions on them accordingly.

Regarding interest, the earliest commandment was only that *Riba-Al-Nasia* (interest-based credit transactions) was absolutely prohibited. Therefore the Hadith narrated by Usama bin Zaid (.r) transmits this statement of Prophet (pbuh) that:

انما الربا في النسبة او في بعض اللافاظ لا في الافق النسنية

“Interest is only on credits”¹⁵

But the Prophet (pbuh) later on began fencing around this “Hima” of Almighty Allah, so that people should not come even closer to it. This Prophetic injunction is derived exactly from this wisdom which forbids charging, receiving, documenting and witnessing of interest and it is precisely from this wisdom that we find the Hadith containing prohibitions over *Riba Al-Fadl*.

Meaning of *Riba Al-Fadl*

Riba Al-Fadl refers to that excess where there is a hand-to-hand transaction of two commodities of the same kind. The Prophet Muhammad (pbuh) declared it unlawful, because this would open the door of covetousness and develop a kind of selfish mentality whose ultimate consequence would be the

¹⁵ Initially, Abdullah Ibn Abbas (.r) gave a fatwa based on this very Hadith that interest is only on loan-transactions, and not on hand to hand transactions. But when he learnt through a continuous chain of transmitters that the Prophet (pbuh) has prohibited charging extra amount on monetary transactions then he retracted his opinion. Therefore, Jabir narrates that رَجَعَ ابْنُ عَبَّاسٍ عَنْ قَوْلِهِ فِي الصِّرْفِ وَعَنْ قَوْلِهِ فِي الْمُتَعَةِ. Similarly, Al-Hakim narrated on the authority of Hayyan Al-Adawi that Ibn Abbas afterwards repented and sought forgiveness from Allah and strictly forbade *Riba Al Fadl* (Interest in excess).

charging of interest. Therefore, the Prophet (pbuh) himself explained this expediency in the Hadith in which Abu Sa'eed Al Khudri narrated in clear words that:

لَا تَبِعُوا الدِّرْهَمَ بِدِرْهَمٍ فَإِنِّي أَخَافُ عَلَيْكُمُ الرَّمَاءِ وَالرَّمَاءُ هُوَ الرَّتَآ

"Do not sell one dirham for two, because I am afraid you would be afflicted with interest".

Injunctions regarding *Riba Al Fadl*

The injunctions relating to this type of interest transmitted from the Prophet (pbuh) are as follows:

عَنْ عَبَادَةِ بْنِ الصَّامتِ قَالَ فَالَّرَّسُولُ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: الْأَذْهَبُ بِالْأَذْهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْأَبْرُرُ بِالْأَبْرُرِ وَالشَّعِيرُ بِالشَّعِيرِ وَالثَّمْرُ بِالثَّمْرِ وَالْمَلْحُ بِالْمَلْحِ مِثْلًا يُمِثِّلُ مَوَاهِبَ إِنَّمَا يَنْهَا بِيَنِيدٍ، فَإِذَا اخْتَارْتَ بِنِيدٍ أَكْصِنَافًا فَبَيْنُوكُمْ كَيْفَ شَائِئُمْ إِذَا كَانَ يَنِيدٌ.

(واحمد ومسلم والنمساني وابن ماجه وابي داود نحوه وآخوه)

وأمرنا أن تُنْعِيَ الْبَرَّ بِالشَّعْرِ وَالشَّعْنُوَّ بِالْبَرِّ يَدًا بِدَائِكْفَ شَفَنَا.

1. *Ubada bin Saamit (r) narrates that the Prophet Muhammad (pbuh) said: 'The barter of gold for gold, silver for silver, wheat for wheat, barley for barley, date for date and salt for salt should be equal in quality and quantity and hand to hand. But if the exchange is between different kinds of commodities then sell them as you like but with the condition that it should be hand-to-hand'. (Ahmed, Muslim, Al-Nasai, Ibn Majah, Abu Dawood and others.) And the Prophet (pbuh) also ordered to exchange wheat with barley and barley with wheat hand-to-hand in whatever way we wish.*

عن ابن سعید الخندي قال قال رسول الله صلى الله عليه وسلم: الذهب بالذهب والفضة بالفضة والبر بالبر والشعير بالشعير والتمبر بالتمبر والملح بالملح مثلاً يمثلاً يبدأ أيبد فمن زاد أو استزاد فقد أربى ، الآخذ والمغطى فيه سواء (البخاري وأحمد ومسلم وفي لفظ)، لا تبيغوا

الذهب بالذهب والورق بالورق إلا وزناً يوزن مثلاً بمثيل مسواء
يسوأة - (احمد ومسلم)

2. Abu Sa'eed Al-Khudri (.r) relates that the Prophet Muhammad (pbuh) said: 'The exchange of gold for gold, silver for silver, wheat for wheat, barley for barley, date for date and salt for salt should be equal in quality and hand-to-hand and whoever gives or takes more than that, is involved in interest-based transaction and both are equal in committing this sin'. (Bukhari, Ahmed and Muslim). And in another report, the Prophet (pbuh) said that: 'Do not sell gold for gold and silver for silver except they should be equal in weight quality and quantity'. (Ahmed and Muslim).

وعنه قال قال رسول الله صلى الله عليه وسلم لا تبغيوا الذهب
بالذهب إلا مثلاً بمثيل ولا تشقو بعضها على بعض ولا تبغيوا الورق
بالورق إلا مثلاً بمثيل ولا تشقو بعضها على بعض ولا تبغيوا منها غالباً

بحاضر - (البخاري و مسلم)

3. Abu Sa'eed Al-Khudri (.r) reports that the Prophet Muhammad (pbuh) said that: 'Do not sell gold for gold except when it is equal in quality. One should neither give anything more nor exchange what is not in possession with what is in possession'. (Bukhari and Muslim).

عن ابن هريرة عن النبي صلى الله عليه وسلم قال التمر
بالثمرة الحنطة بالحنطة والشعير بالشعير والملح بملح مثلاً بمثيل يدأ
يبيه فمَن زاد أو استرداد فقد أزيد إلا ما اختلفت ألوانه - (مسلم)

4. Abu Hurairah (.r) narrated that the Prophet (pbuh) said: 'The exchange of date for date, wheat for wheat, barley for barley and salt for salt should be equal in quality and hand-to-hand. And whoever gave or took more, is involved in an interest-based transaction, except when the colours differ'.

عن سعيد بن أبي وقاص قال سمعت رسول الله صلى الله عليه وسلم
رسئل عن شراء التمر بالرطب فقال أتفصل الرطب إذا يسقى فقال نعم
فنهاء عن ذلك (مالك والترمذى وابوداود والنسانى وابن ماجه)

5. *Sa'ad bin Abi Waqqas (.r) narrated that I heard the Prophet (pbuh) been asked about the exchange of dry date with a juicy date. The Prophet (pbuh) responded with a counter question: 'Does the juicy date decrease or reduce after getting dried? The questioner answered yes! Then he prohibited it absolutely. (Malik, Tirmizi, Abu Dawood, Nasai, IbnMajah).*

عَنْ أَبِي سَعِيدٍ قَالَ كُنَّا نَرْزَقُ تَمْرًا الجَمْعُ وَهُوَ الْخُلُطُ مِنَ التَّمْرِ وَكُنَّا نَبْيَغُ صَاعَيْنِ بِصَاعٍ فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا صَاعَيْنِ يَصْتَاعُ وَلَا درهمين بدرهم - (البخاري)

6. *Abu Sa'eed Al Khudri (.r) says: Generally, we used to receive mixed dates as our salaries and wages. And we used to exchange two measures of mixed with one measure of good quality dates. Then the Prophet (pbuh) told 'No exchange of two measures with one measure and two dirhams with one dirham'. (Bukhari)*

عَنْ أَبِي سَعِيدٍ وَأَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِسْتَعْمَلَ رَجُلًا عَلَى خَيْرَ فَجَاءَهُ بِتَمْرٍ جَنِينٍ فَقَالَ أَكُلُّ تَمْرٍ خَيْرٌ هَكُذا قَالَ لَا وَاللَّهِ يَا رَسُولَ اللَّهِ إِنَّا لَنَأْخُذُ الصَّاعَ مِنْ هَذَا بِالصَّاعَيْنِ وَالصَّاعَيْنِ بِالثَّلَاثَ فَقَالَ لَا تَفْعَلُنِي الْجَمْعُ بِالدَّرَاهِمِ ثُمَّ اتَّبِعْ بِالدَّرَاهِمِ جَنِينًا وَقَالَ فِي الْمُنْزَانِ مِثْلَ ذَلِكَ - (البخاري و مسلم)

7. *Abu Sa'eed (.r) and Abu Hurairah (.r) relate that the Prophet Muhammad (pbuh) appointed a certain person as the revenue collector of Khyber. So he brought the best kind of dates. He Prophet (pbuh) asked: 'Are all the dates of Khyber like this?' He replied: No, O Prophet Muhammad (pbuh). The mixed dates which we collect, we sometimes exchange its two measures with one and at times three measures with two measures of good quality dates. Hearing this, the Prophet (pbuh) ordered: 'Do not do this. First sell the mixed dates for dirhams, and then buy good quality dates with these dirhams. This is exactly what he said about exchange with respect to weight'.(Bukhari and Muslim)*

عَنْ أَبِي سَعِيدٍ قَالَ جَاءَ بِلَالٌ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَتَمَرِّدُ بِرَبِّنِي
فَقَالَ لَهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مِنْ أَيْنَ هَذَا قَالَ كَانَ عِنْدَنَا تَمْرٌ
وَدَى فَبِعْثَتْ مِنْهُ صَاعَنِينِ يَصْبَاعَ فَقَالَ أَوَهُ عَيْنُ الرِّبَّا، عَيْنُ الرِّبَّا لَا
تَفْعَلْ وَلَكِنْ إِذَا أَرَدْتَ أَنْ تَشْرِيَ فِيغَ الْتَّمْرِ بِتَنْعِيْ أَخْرَثُمْ إِشْرِيَّهِ۔
(البخاري و مسلم)

8. Abu Sa'eed (.r) says: Once Bilal (.r) came to the Prophet (pbuh) with "berni" dates (which was an excellent variety of date). The Prophet (pbuh) asked 'from where did you get these?' He replied: We had bad quality dates. I exchanged two measures of those with one measure of good quality dates. The Prophet (pbuh) exclaimed: 'Oh! That is absolutely interest! It is absolutely interest! Don't you ever do this? If you want to buy good quality dates, then sell your dates for dirhams or anything else and then buy good quality dates with this value / price.' (Bukhari and Muslim).
- عَنْ فُضَّالَةِ بْنِ عَبْدِ اللَّهِ قَالَ إِشْرَيْتُ قَلَادَةً يَوْمَ حَيْنَرِ بِإِثْنَيْ عَشَرَ دِينَارًا
فِيهَا ذَهَبٌ وَخَرْزٌ فَفَعَلْتُهَا فَوُجِدَتْ فِيهَا أَكْثَرُ مِنْ اثْنَيْ عَشَرَ دِينَارًا
فَذَكَرْتُ ذَالِكَ لِنَبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ لَا يَنْبَغِي حَقِّيْ يُفَصِّلَ۔
(مسلم، نسائي، ابو داود، ترمذى)
9. Fudala bin Ubaid (.r) says: On the day of Khayber, I bought a necklace of gold with pearls for twelve dinars. Then I broke it up and separated the pearls and gold and found gold more than twelve dinars¹⁶. I mentioned this to the Prophet (pbuh). He said: 'next time, unless the gold is separated from the pearls in a jewel-studded necklace, it must not be sold'. (Muslim, Nasai, Abu Dawood and Tirmizi)

¹⁶ Please note that during that time dinars and dirhams were made exclusively with gold and silver and their price would be according to their weight. Thus in those times to buy gold for dinars and purchase silver for dirhams was the same as a person buying gold for gold and silver for silver.

عَنْ أَبِي بَكْرَةَ قَالَ نَبِيُّ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الْفِضْلَةِ بِالْفِضْلَةِ
وَالْذَّهَبِ بِالْذَّهَبِ إِلَّا سَوَاءٌ بِسَوَاءٍ وَأَمْرَتَا أَنْ تَشْتَرِي الْفِضْلَةَ بِالْذَّهَبِ
كَيْفَ شَتَّنَا - (البخاري و مسلم)

10. Abu Bakrah (.r) says that the Prophet (pbuh) forbade exchange of silver for silver, gold for gold except if these are equal in quantity. And ordered us that we exchange silver for gold and gold for silver in whichever way we like. (Bukhari and Muslim).

Conclusions drawn from the above mentioned injunctions

The following principles and commandments are derived by contemplating over the words and meanings of the above mentioned Ahadith and the conditions prevailing at that time.

- 1) It is obvious that the necessity of bartering two commodities of the same variety arises only when despite their similarity, the two commodities are different in nature or quality, for example- two types of rice or wheat, pure and impure gold, mineral and sea salt etc. The exchange of different types of commodities of the same kind should be done by keeping the current market price into consideration though. However, even if that is the case, the frequent exchange of commodities with its increasing and decreasing value, one runs the risk of developing a selfish attitude that will ultimately legalize interest and will not consider this illegitimate form of profit making to be morally incorrect. That is why, the Shariah has established a rule that if the need for the exchange of commodities of same kind arises, then it must be done only in the two following ways: One, is to ignore whatever little difference exists between the price and value of the commodities in question and the exchange be made. The other way is, instead of making a direct exchange, a person sell the commodity in cash as per the market value and buy that

commodity from another person with the money earned in accordance with the market price.

- 2) As we have already explained, in the ancient times all the coins were of gold and silver and the value of these coins was actually the value of gold and silver. In those days, the need to exchange a dirham for a dirham or a dinar for a dinar arose only when a person required for example an Iraqi dirham in exchange for a Roman dirham and a Roman dinar for a Persian dinar. In such needy times, the Jewish money-lenders and other illegitimate profit-mongers used to make profit in the same way as present time exchange rates are charged on the exchange of foreign currency, or some pence or cents are charged from those who ask for small change within the country or who change the currency notes of 5 and 10. Since even this thing leads to the mentality of devouring up interest, the Prophet (pbuh) declared the exchange of silver for silver and gold for gold with increase or decrease in the quantity to be unlawful and also declared selling one dirham for two to be unlawful.
- 3) One form of exchange of the same-kind of commodities is that a person has the raw-material and another person has the finished product of the same commodity and would like to affect an exchange. In this case, it would be examined whether the industry has completely changed the structure of the commodity or despite the value addition or industrial processing, no major change has occurred in the finished product with respect to the raw material. In the first case, there could be an exchange of commodities with the increase and decrease in the quantity, but as for the second case, the intention of Shariah is that either there should not be any exchange, or if there is an exchange then it should be in equal quantity so that this disease of covetousness be prevented from getting a boost. For example the value addition and changes appearing in cloth made from cotton, and machine tools made from iron is quite significant.

However there are only slight changes in a single or a pair of bangles (jewelry) made from gold. There is no objection in the first case, if we exchange large amounts of cotton for small amounts of cloth and heavy weights of raw iron for lightweight machine tools made of iron. But in the second case, the exchange of the gold bangles should either be made on equal weights of gold¹⁷ or the gold had to be sold in the market and bangles of the same price be bought.

- 4) The exchange of commodities of various kinds with increase and decrease in the quantities could be made, but the condition is that it should be hand-to-hand. The reason for this condition is that the hand-to-hand transactions are almost completely done according to the current market rates. For example, a person who barter silver for gold, would, in a monetary transaction, give the same value of silver as against gold; at a price which is currently prevalent in the market. But a loan-transaction is not free from the anticipation that it would involve interest. For example a person who makes a deal that he would give 80 tola (one tola is approximately equal to 11.66 grams) of silver and take 2 tola of gold after a period of one month, has in reality no means of knowing that 40 tolas of silver would be equal to one tola of gold. Therefore, in any case, the value-reference that he has predetermined in the exchange of gold and silver is a result of 'interest devouring' and 'speculative' mentality. And the debtor by signing this deal has also actually gambled thinking that

¹⁷ Here one should not be in doubt that this would close down the business of goldsmiths because they have to sell the products made of gold for the equal measure of gold, and they will not be able to take any remuneration for their craft and industry. This argument is wrong for the reason that we do not exchange anything with the goldsmith but rather provide him the gold so as to get our desired jewelry. So, he also deserves to get his remuneration for his work just like a tailor or a baker. But if we buy jewelry from a jeweler, then it would definitely be unlawful to give gold of greater value. In fact it should be paid in either paper currency or silver coins.

probably after a period of one month, the comparative value of gold and silver might become 35:1, instead of 40:1. On this basis, Allah the Law-Maker legislated that the exchange of commodities of different kinds with increase and decrease in the quantities could only be made hand-to-hand. As far as loan is concerned it should only be made in the following two ways: Either the amount that is loaned with a particular kind of commodity should be paid back with same kind of commodity or instead of making this barter transaction in commodities, it should be paid back in cash. For example Zayd borrowed Rs 80 or wheat worth Rs 80 from Baqar today and after a period of one month Baqar paid back barley worth Rs 80 or simply paid Rs 80 back.

This law is made explicit in the following Hadith mentioned in Abu Dawood:

ولباس ببيع الذهب بالفضة أكثر مما يدأ بيد وأما النسبة فلا ولباس

ببيع البُرّ بالشعير والشعير أكثر مما يدأ بيد وإنما النسبة فلا.

'There is no objection if gold is sold for silver and the silver is more, but only when the transaction is made hand-to-hand. But if it is a loan, then it is not lawful. And it is not objectionable if wheat is sold for barley and the barley is more, but only when the transaction is hand-to-hand. But if it is a loan, then it is not lawful'.

The observation by 'Umar (.r)

These primary injunctions (regarding the prohibition of interest) of the Prophet (pbuh) are wide ranging and comprehensive, but elaboration about all the sub-categories of those injunctions (prohibiting interest) are not to be found. That is why, many such (unexplained) sub-categories of injunctions (on the prohibition of interest) exist that might create doubts in people about their category: whether they fall under interest or not. This exactly is the point to which 'Umar (.r) indicated when he said that:

ان آية الربا من آخر ما نزل من القرآن وان النبي صلى الله عليه وسلم
قبض قبل ان يبيّنها لنا فدعوا الربا والرببة.

"The "ayah of interest occurring in the Quran was one of those that were revealed in the last stage / period of the Quranic revelation. And the Prophet (pbuh) passed away before he could explain all the injunctions related to it. Therefore, leave the things that are 'confirmed' as interest and also leave out the things that are not confirmed but doubtful".

The Differences between the Jurists

The sheer range of these injunctions gave rise to differences between the jurists of the Ummah in determining the various usurious commodities, the cause and details of its prohibition.

One group is of the opinion that interest is charged only on those six kinds of commodities as mentioned by the Prophet (pbuh) i.e. gold, silver, wheat, barley, date and salt. Other than these, there could be exchange of "same-kind" commodities, without any hindrance despite quantitative disparity. Qatadah, Ta'us, Usman, Al-Batti, Ibn Aqeel Al Hambali and the Zahiris belong to this school of thought.

The second group says that this rule is applicable to all those commodities whose exchange is based on weights and measurements. Ammarah and Abu Hanifah belong to this school of thought. And according to one report, even Imam Ahmed and Imam Ibn Hambal also subscribe to this view.

The third group believes that this rule is applicable to gold, silver and those food items whose exchange is based on weights and measurements. Sa'eed bin Al Musayyib belongs to this school. And according to separate reports, even Imam Shaf'ee and Imam Ahmed endorse this view.

The fourth opines that this rule is specific to those food items that are stocked up. This is the school of Imam Malik.

With regards to dirham and dinar, the school of Imam Abu Hanifah and Imam Ahmed considers the weight to be the cause of prohibition, while Imam Shaf'ee and Imam Malik and according to one report even Imam Ahmed consider the price-value to be the cause of prohibition.

Due to this difference of opinion between the various scholars, even the detailed aspects of this prohibitory injunction had different interpretations by different scholars. According to one school, one kind of commodity does not fall under the category of usurious commodities at all, whereas, according to another school, it is included in the usurious commodities. The cause of prohibition concerning a commodity is one thing in one school of thought, whereas it is something else in another school. That is why some of the transactions fall under interest-based transactions according to one school and according to another, they do not. But these differences are not seen in those matters that definitely fall under the category of interest (about which there is no ambiguity) as explained by Quran and Sunnah. However, differences occur in those matters that are of doubtful and of unclear nature and fall in the grey area between being explicitly lawful and being prohibited. But if someone blames these differences that exist in the minor details (of the prohibition of interest) and tries to brand the laws of the Shariah and laws that are backed by crystal-clear Quranic text to be doubtful and confusing, and tries to open the doors for excuses, exemptions and far-fetched interpretations, and by these arguments and debates encourages others to tread the path of capitalism, then however much good intentions he might have, in reality he would be counted among those who abandoned the Book of Allah and the Sunnah of His Prophet (pbuh) and instead followed conjecture and speculation, thereby misguiding himself and others.

Quantitative Disparity in the Exchange of Animals

It is worth mentioning here that animals are exempted from the injunction forbidding quantitative disparity in the exchange of "same-kind" commodities. There can be an exchange of animals despite quantitative disparity. The Prophet (pbuh) himself has done this and the Sahaba (Noble Companions) after him, because there is a huge difference between one animal and another animal from the perspective of value and estimation. For example, the difference between an ordinary horse and the much superior thoroughbred racing horse or an ordinary street dog and a pure bred. There is such a huge difference in their prices that an exchange of one kind of animals could be made for hundreds of animals of another.

RECODIFICATION OF THE ECONOMIC LAWS AND ITS PRINCIPLES

We admit that times have changed. The world has witnessed a great cultural and economic revolution. And this revolution has changed the face of trade and monetary transactions across the globe. In such changed conditions, the laws of *ijtihad* (independent reasoning and judgment) which were codified in the early years of Islam, keeping the then economic and cultural conditions of Iraq, Hijaz, Al-Sham (which includes modern day, Syria, Lebanon, Palestine and Jordan) and Egypt into consideration, are not enough to meet the present day requirements. The honourable jurists of yore interpreted the laws of Shariah with respect to those types of transactions that were found in their surrounding world. But today, many of those transactions have ceased to exist and many other new ones have come into existence, which were not present at that time. Therefore, there is an absolute necessity for the addition of new laws to the already existing monetary, economic and business laws found in our old books of *fiqh* (jurisprudence). Hence the question is not whether there should be any recodification of Islamic laws concerning economic and monetary affairs, but rather the manner and methodology of its recodification.

Need for contemplation before *tajdeed* (recodification)

If we are to follow the way of our “modernists” and begin to codify the injunctions according to their whims and fancies then, it would not be a recodification of the injunctions of Islamic Shariah, rather it would result in amendments and

outright modification. And it would mean that in reality, we are reneging from Islam in our economic lives. Because, the way towards which, these gentlemen are guiding us, is totally antagonistic to the Islamic spirit, to its objectives, outlook, principles and premises. The aim of our 'modernists' is merely to make money irrespective of the means – fair or foul, whereas Islam accepts only lawful earnings. Their end-result is to make people millionaires, regardless of the means being legitimate or illegitimate. But Islam wants a human being to earn through lawful means, without usurping the rights of other people whether one manages to become a millionaire or not. The "modernists" regard him to be successful who acquires lot of wealth, controls more and more economic resources and thus becomes the owner of luxuries, honour, power and influence. Thus through whatever selfish, cold-hearted, false, dishonest and immodest means he might have acquired these things, irrespective of how many rights of his own fellow human beings he might have snatched to achieve this position, inspite of committing a lot of corruption, evil, immorality and immodesty for his own vested interests and to whatever great lengths of material, moral and spiritual destruction, he might have pushed humanity, he would still be considered a successful person. But in the sight of Islam, a successful person is the one who earns his livelihood with truthfulness, honesty and the right intentions along with honouring the rights of other people. If in these efforts, he were to become a millionaire, then it would be a reward from Allah. But even if he were to spend his entire life on the support of his Lord (charity), in poverty and unfulfilled dreams, he would still be successful. This difference of opinion pushes people to a way that is totally opposite of Islam namely crass and crony capitalism. The ease, short-cuts and permissibility, which are offered in the path of Capitalism are absent in Islam. However long one may try and stretch the principles and injunctions of Islam it would still not be possible to derive a new code of conduct (that accepts interest and Capitalism) from the laws

and principles of Islam. Hence, anyone who wishes to tread this path, it is better for him to stop deceiving himself and the world. He should understand that in order to tread the path of Capitalism, instead of Islam, he has to follow the economic and monetary principles and injunctions of Western Europe and America. And as for those who are Muslims, and wish to remain so, who believe in the Quran and the Prophetic methodology and who feel obliged to solely follow the Islamic way in their practical life, they do not require a new code of laws in order to benefit from capitalistic institutions, or create concessions in the Islamic law that could make them successful businessmen, bankers and industrialists, rather they want to model their economic life, their monetary and trade policies in the light of Islamic principles, avoid those ways and means in their economic transactions which are not approved by Allah, and make use of provisions found in the Islamic Shariah if problems arise while dealing with other countries and communities. There is an extremely pressing need for the modern recodification of the Islamic law for this purpose and it is obligatory for the scholars of Islam to discharge this important duty.

The need for *tajdeed* (recodification) in the Islamic Laws

Islamic law is not stagnant and static which remains unchanged forever as it was codified for the first time. Initially it was codified for a specific period of time under specific conditions but this does not mean that no change can be made in it even with the transformation of time, place and circumstances. Those who believe this law to be unchangeable are highly mistaken, but rather we would say that they are totally ignorant of the spirit of the Islamic law..The fact is that the Islamic Shariah is based on wisdom and justice. The real objective of laws and legislation is to organize human affairs and mutual relations in such a way that instead of enmity and competition, there must be cooperation and empathy in the

spirit of industry and hard work. We should help discharge each other's rights and obligations with justice and harmony and provide complete opportunity to every person in such a way that not only he develops his full potential but also become helpful for others in their growth and development. Men must stop being an obstacle in the path of progress and being a cause for corruption and disorder. For this purpose Almighty Allah on the basis of His knowledge of human nature and reality, knowledge which no one has except Him, revealed guidelines for every department of life. He instructed His Messenger (pbuh) who in accordance to the Divine knowledge given to him presented a model before us, by implementing those guidelines in practice. Although those guidelines were revealed during a specific period of time and under certain conditions and the Prophet (pbuh) implemented those guidelines in a specific society (of Arabia), yet, from those words and the strategies employed by the Prophet (pbuh) for its implementation, we derive vast and universal principles beneficial and equally practical in every period of time and condition for the just and fair reorganization of human society. In Islam, these principles are unalterable and irreplaceable. Now it is up to the *Mujtahidoon* (Law Experts) of every period, to derive injunctions from the principles of Shariah for our daily and practical life and to address the changes in conditions and events and to implement these injunctions in transactions in such a way that the purpose / intention of the Law-Giver is served. Just as the principles of Shariah are immutable and unchangeable, the laws derived from these principles by humans are not so and hence can be changed and modified. That is because those principles are made by Allah, whereas the laws are made by men. The principles are meant for all times, places, conditions and events but laws are for specific situations and events.

Pre-requisites for *tajdeed* (recodification)

In Islam, there is enough flexibility to be utilized in accordance with the change of situation, conditions and peculiarities of events. The required changes / alterations can be made in the Islamic laws in the light of principles of Shariah, and new laws and by-laws can be made to meet the new requirements and changed conditions. In this matter, the *Mujtahidoon* of every country and era, have the right to extract the laws and work out the details of issues and problems as per the peculiarities of place and time. And it is never the case that a scholar of a particular period of time is given the charter to make laws for all the nations of the world for all time to come and force others to forfeit their right to do the same. But it also does not mean that one is at liberty to change the laws according to ones whims and fancies and give twisted interpretations by distorting the fundamental Islamic principles, and turn away the original laws and from the real objective of the Law-Giver. Even for this, there are some rules based on certain conditions.

First pre-requisite

The first thing which has to be understood in order to codify the details of the law is the nature of the Shariah. And this could only be achieved by contemplating over the teachings of the Glorious Quran and the life of Prophet (pbuh)¹⁸.

¹⁸ By the way, it would not be out of place to state that the real reason behind the closure of the door of *Ijtihad* is the absence of the study of Quran and the life of Prophet (pbuh) from (the syllabi of) our religious education and to find in its place the teachings of only one system of *Fiqh*. And this education is imparted in such a way that the real difference between the commandments of Allah and His Messenger (pbuh) as mentioned in the scriptures and the legal opinions of the Imams is not made clear to the students. As a matter of fact, unless, a person develops an insight into the Quran along the lines of wisdom and studies the conduct of

....Cont. on next page

Whoever gains a vast and penetrative insight into these two sources would then be thoroughly acquainted with the nature of Shariah and in every situation his insight would guide him to the correct way and one that is in conformity with the nature of Shariah, and would be aware of the incorrect ways that would bring imbalance and disharmony in the nature of Shariah if adopted. And the modification and change brought in the laws on the basis of this insight would not only be correct and in harmony with the broader purpose of the Law-Giver, but contextually too it would be as accurate as the law of the Law-Giver Himself.

Numerous examples could be given to support this view. For example, the commandment of 'Umar (.r) that no "hadd" (i.e. legal punishment) be slapped on any Muslim during war. Another example is that of Sa'd bin Abi Waqqas (r.) forgiving Abu Mahjan Saqafi (.r.) during the battle of Qadisia when he was caught drinking alcohol. One more example: the decision of 'Umar (.r) that the hand of the thief should not be cut in times of drought.

Although these matters appear to go against the clear and unequivocal laws of the Law-Giver, but yet, one who is acquainted with the nature of Shariah knows that under special circumstances, disobedience of a general law is in complete conformity with the purposes of the Law-Giver. In this category the case of the slaves of Hatib bin Abi Balta'a needs to be examined. A certain person of Muzaina tribe, complained to 'Umar (.r) that the slaves of Hatib have stolen his camel. At first, 'Umar (.r) ordered to chop their hands off. But then, he immediately realized that although this person utilized the services of his slaves, he starved them and kept them hungry pushing them into a situation where they were forced to steal.

Prophet Muhammad (pbuh) with depth and penetration he will never understand the nature of Islam and the principles of its law. This is a necessity and pre-requisite to do *Ijtihad* which cannot be achieved by merely reading the books of *Fiqh* for ones entire life.

Hence in such a case, if anyone of them consumes a forbidden thing, then it would be permissible and justified (to a certain extent). By declaring this, he forgave the slave and ordered their master to pay the compensation to the owner of the camel. Similarly, in the case of "triple *talaaq*" (divorce by pronouncing it three times) the verdict of 'Umar (.r) is different from the conduct found at the time of the Prophetic (pbuh) period. Since all this alterations in the laws are made according to a deep insight into the nature of Shariah, they are not considered improper. On the contrary, if such changes are brought about without any understanding and insight, it would create disorder and disharmony in nature of Shariah and ultimately a cause for corruption.

Second pre-requisite

After understanding the nature of Shariah, the second important condition is to keep the overall picture of all the injunctions of the Law-Giver when there is a need to make laws for any domain of life. And also by contemplating on these laws, efforts must be made to know what the Law-Giver intends with them, what road-map has He charted out for the organization of this domain, what significance does this domain carry in the bigger scheme of life and what strategy has the Law-Giver adopted with respect to the position of this domain? Without understanding these things, whatever law is made and whatever modifications are made in it, it will not be according to the purpose of the Law-Giver, and by this, there would be a deviation in the course and purpose of the law. In (implementing) Islamic laws the 'letter' (the formal and direct meaning) of the injunction is as important as its spirit and objective. The real function of *fiqh* is actually to maintain and keep an eye on the objective, wisdom and expediency of the Law-Giver. Sometimes, a situation arises wherein following the 'letter' of the law (which was given keeping the general conditions in view) might kill its real spirit and objective. In

such a situation, it becomes necessary to ignore the ‘letter’ and adopt a way through which the objective of the Law-Giver could be achieved. The Prophet (pbuh) emphasized the teachings found in the Quran concerning enjoining what is right (*Ma'ruf*) and forbidding what is wrong (*Munkar*) and yet in spite of that he prohibited emigration from the fear of despots and tyrants. That is because the objective of Law-Giver is to replace corruption with righteousness. When more corruption is anticipated from any act and there is no hope of any goodness, then it is better to avoid it. An incident is reported in the biography of Ibn Taymiyyah that during the tumultuous period of Tartars, he and his people happened to pass by a group of people, busy in drinking alcohol. His companions wanted to stop them from drinking, but Ibn Taymiyyah prevented them from doing so and said that Allah has forbidden alcohol so as to close the doors of corruption and perversion, but here we see alcohol holding these tyrants back from bigger corruption i.e. genocide of innocent lives and plundering of wealth. Hence, in such a situation, stopping them from alcohol is against the Law-Giver. From this, it is established that with the peculiarities of the events, changes could be made in the injunctions. But the change should be made in such a way that they should serve the purpose of the Law-Giver and not otherwise.

Similarly, there are some of the laws that are stated in specific words in a specific context. Now it is not the job of the “*faqih*” (i.e. jurist) to stick to the original words despite changes of conditions and circumstances. But rather, he should try to figure out the real purpose of the Law-Giver from those words, and make laws that realize this objective according to the circumstances. For example, the Prophet (pbuh) ordered to give one measure of dates or barley or resins as charity at the end of Ramadan. But this does not mean that the measure which was prevalent at the time of Prophet (pbuh) or the kinds of commodities which he has mentioned (should be given in charity) exactly as has been stipulated. The only real objective

of Law-Giver is that every well-off person should give charity on the day of Eid to his less fortunate brother and which would enable him and his family to spend Eid with joy and happiness. This objective can be realized in a different way also which would be nearer to the proposed way of the Law-Giver.

Third pre-requisite

Then it is also necessary to fully understand the Law-Giver's principles and methodology of legislation so that, when the time comes, those principles and methodology could be followed in law-making but of course in the light of the correct context. This would never be achieved until man fully comprehends the structure of the Shariah and contemplates the specifics of every individual injunction. How has the Law-Giver struck a balance between the various injunctions? How has He taken care of the (weaknesses of) human nature while legislating? And what methods did He adopt to repel corruption and embezzlement and at the same time safe-guard the natural interests and requirements of man? How does He organize human affairs and discipline them? How does He inspire man to lofty ideals and then by considering his natural weaknesses, create facilities in his path? All these matters require deep contemplation and deliberation. And the answers to these questions lie in the words and meanings of the Quranic text and the wisdom of the words and actions of the Prophet (pbuh). Whoever is equipped with this knowledge and understanding is able to bring subtle changes in the laws in the light of the context of the situation and is also able to make new laws in the absence of any explicit text. Because, whatever the methodology such a person would adopt for *ijtihad*, it should not deviate from the legislative principles of Islam. For example, the Holy Quran mentions levying *jizya* (i.e. tax levied on non-Muslims by an Islamic country in lieu of security and protection) only on the people of the book (i.e. Jews and Christians). But by way of *ijtihad*, the Noble Companions

extended it to include the Magians of Persia, the idol-worshippers of India and the Berbers of Africa. Similarly, during the era of Rightly Guided Caliphs, when many nations were conquered, many situations came up where Muslims had to deal with the non-Muslims and they found no explicit injunctions in the Quran and Sunnah. The companions themselves codified laws which were in complete harmony with the spirit of the Islamic Shariah.

Fourth pre-requisite

The changes in the conditions and events which demand a change in the old laws or legislation of new laws must be examined in two respects. The first pertains to the kind of conditions, their associated peculiarity and the forces working behind them. The second is related to the kind of changes especially from the Islamic point of view and type of change in the laws demanded with each change. Take the question of interest for instance which is under discussion. For the recodification of modern economic laws, the first thing we need to do is to analyze the current economic world order. We must study economics, the global financial system and the latest methods of economic transactions, with deep insight. We must try to understand the internal forces working in economics. We should familiarize ourselves with its theories and principles and try to gain knowledge about the practical manifestations of these theories and principles. And then, we must examine how these changes can be classified which have occurred in the past? And what laws can we make for every class of society as per the nature and objectives of Shariah and its principles of legislation?

Regardless of the details, these changes can primarily be divided into two classes:

1. Those changes that have occurred as a result of change in civilization. These are actually the natural consequence of

intellectual growth of man, the growth in natural resources, development of material means, the facilities of transportation and communications, progress in agriculture, science, technology and globalization. From an Islamic perspective, these changes are real and quantifiable. These can never be disregarded nor is it the objective (of Islam) to ignore them. But rather we need to make new laws in the light of Shariah for these new economic conditions, new financial and business transactions, so that in these changing conditions, Muslims could model their lives on the correct Islamic lines.

2. Those changes which are not the natural result of the progress of civilization, but have actually occurred due to the domination of the oppressive capitalists on the global economy and the global financial system. The same tyrannical capitalism existed in the era of *Jaahiliyyah*¹⁹. The tyranny that was shackled and caged by Islam for centuries, is now once again dominating the global economy. It has transformed the way different economic transactions are conducted with its power and domination of the modern banking and financial institutions by using the most advanced and sophisticated tools and resources. From the Islamic perspective the changes brought forth by this capitalistic system, are not real and natural but artificial and unnatural and they can only be destroyed forcefully and whose elimination is absolutely essential for the progress and prosperity of the humankind. Every Muslim is thus obliged to spend all his energy in destroying this tyrannical system and to mold the economic system in accordance with the Islamic principles. The responsibility

¹⁹ Here we are not using the word "Capitalism" in the limited sense of the term. But rather we are referring to a broader meaning which is hidden in the reality of Capitalism. Capitalism as a "term" is the product of Europe's Industrial Revolution. But the "reality" of Capitalism is quite ancient and is in existence since the time man handed over the guidance of his civilization and morality to Satan.

of battling Capitalism actually rests on the shoulders of Muslims rather than communists. A communist is concerned only with “bread and butter- issues” whereas a Muslim is also concerned with religion and morality. A communist wants to fight the battle for the sake of proletariats. But a Muslim strives for the real benefit of the entire humankind, which includes even the capitalist. A communist’s war is based on selfishness, but a Muslim’s war is for Allah. Thus a Muslim can never compromise with the contemporary tyrannical system of Capitalism. If he is a true Muslim then it is his religious duty to try and destroy this oppressive and tyrannical system and to courageously bear the brunt of whatever the losses he incurs. The intention of whatever laws Islam prescribes in the sphere of economics can never be to facilitate the assimilation of Muslims into the capitalistic system, their participation in its institutions and the creation of ways and means for the success of capitalism. The sole objective of Islam is to save Muslims from all over the world from this filth (of Capitalism) and close all the doors that lead to and which promote this oppressive and illicit ideology.

General Principles for Relaxation in the Laws

There is enough room in Islam for the relaxation of the laws as per circumstances and needs. Therefore, one of the principles of *fiqh* is:

الضرورات تبيح المحتظورات

“Because of needs, some illegitimate things become permissible” and

اللهم تجعل لي التيسير

“Ease should be created if there is hardship in following any rule of Shariah”

This rule has been referred to, numerous times in the Holy Quran and the Hadith of the Prophet (pbuh)

For example the Quran says:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا

On no soul does Allah Place a burden greater than it can bear. (Surah Al Baqarah: 286)

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ

Allah intends for you ease, and He does not want to make things difficult for you. (Surah Al Baqarah: 185)

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

and has not laid upon you in religion any hardship

(Surah Al Hajj: 78)

In a Hadith, it is narrated that the Prophet (pbuh) said:

أَحَبُّ الْبَيْنَ إِلَى اللَّهِ تَعَالَى حِنْفِيَةُ السَّمْحَةِ وَلَا ضَرَرٌ وَلَا ضِرَارٌ فِي
الْإِسْلَامِ

"The best system of life in the sight of Allah is that which is straight and easy. In Islam, do not inflict injury nor repay one injury with another."

Hence, it is an established rule in Islam that the laws can be relaxed when there is a situation that entails hardship or a possibility of harm. But this does not mean that the laws of the Shariah and the limits that have been imposed by Allah are to be broken by the whims and fancies of people and by their imaginary and hypothetical needs. There are some rules and regulations even for this which could be easily understood by pondering over the Shariah. The first thing to be considered is the degree of hardship. Now, legal obligation from every hardship cannot be lifted in its absolute sense, else no law could exist. The legal obligation of *wudu* (ablution) during winter, fasting during summer, and the obligations of journey of *Hajj* and *jihad* are all undoubtedly hardships. But these are not those kinds of hardship which the legal obligations are to be dropped together. For dropping or relaxation of laws, the hardship should be such that it could be a reason for possible harm or injury. For example the inconveniences of journey, the

pains of disease, the tyranny and oppression of a despot, an extraordinary financial problem, a widely spread unrest or rebellion or any physical disability, may be classified as those special situations, in which the Shariah has adopted a very moderate approach. In other such similar situations too, a similar approach in moderation can also be made.

Secondly, the degree of moderation should be proportionate to the degree of hardship and difficulty. For example, it is not permissible for a person who can easily offer *Salah* in the sitting posture to offer the *Salah* lying down (merely because it is more convenient). It is not permissible for a person to skip fasting the entire month of Ramadan because of some sickness for which a mere ten days of not observing the fast could have been sufficient. In an emergency situation when a few drops of alcohol or a few morsels of unlawful food are enough to save one's life, it is not permitted to drink or eat beyond ones real need. Similarly a doctor, who needs to examine the parts of the body that are normally covered, is not allowed to see anything beyond what is really required. In this way, the amount of relaxation of the laws would be decided according to the amount of hardship and necessity.

Thirdly, to avoid any possible harm or injury, no strategy or method should be adopted which may cause the same or more harm. In fact, only those methods are allowed whose harm or ill-effect is comparatively less. Another closely associated rule is that to avoid any evil, one cannot be involved in the same or even bigger evil (thus Islam does not accept that the ends justify the means). Although it is permitted that when a person has no choice but to simultaneously face two evils, then he should choose the lesser of the two evils.

Fourthly, repelling evil takes precedence over safe guarding the public interests. In the sight of Shariah, it is more important to repel evils and avoid the unlawful rather than performing ones duties and obligations. That is why the Shariah is generous when it comes to offering concessions in

implementing what is lawful but the Shariah is not that lenient in matters pertaining to the prohibited and the unlawful. The amount of relaxation that can be found with regards to journey, disease, prayer, fasting and other affairs, and the same amount is not seen concerning impure and forbidden matters.

Fifthly, with the disappearance of harm, the relaxation also vanishes. For example, with disease being treated, the need for a nurse does not remain.

The concessions in the Shariah for Interest

After getting fully acquainted with the above mentioned rules, let us ponder to what extent can relaxation be made in the Shariah in the case of interest?

- 1) The nature of giving and taking interest is not the same. A person would in some situations be forced to take loan on interest, but this is not the case with the one who charges interest. Interest can only be charged by the wealthy, but what could force the wealthy to make a distinction between lawful and unlawful?
- 2) Then even if we talk of someone taking an interest-based loan, every necessity doesn't come under the definition of compulsion. The extravagance and ostentation displayed in weddings and other social ceremonies can be easily avoided. Buying a new car, constructing new houses cannot be real compulsions. Borrowing for the sake of luxuries and expanding business are not matters of survival. There are other such matters that are interpreted as "necessity" and "compulsion" and for which thousands of rupees are borrowed. These have no value whatsoever in the sight of Shariah and the people who give interest for these purposes are utter sinners. If Shariah were to allow interest-based loans under any compulsion, then it would only be if the compulsion includes the concessions under the lawful and the prohibited. For example a very grave problem from

which there is no escape without taking interest-based loan, or if honour or life is in severe jeopardy, or the real anticipation of an unbearable hardship or harm. In such a situation, taking interest-based loan would be permissible for a true Muslim. But all those prosperous Muslims would be sinners, who did not help their brother in his hour of need and pushed him to commit this unlawful act. I would say that the calamity and responsibility of this sin would fall on the entire nation, because the community ignored organizing the *Zakat*, charity and endowment funds, as a result of which, the people of his nation became helpless, and no other way was left for them other than begging before the money-lenders.

- 3) Even under extreme conditions, one should limit oneself to an amount of the loan that is actually required. And it is mandatory, that as soon as a person is able to stand up on his feet, the first thing he ought to do is to relieve him of this responsibility. Because, after the need is gone, charging even a penny of interest is absolutely forbidden. As to the question of whether the problem is serious or not, or even if it is, then how serious and when would it be dealt with, then the answer is related to the intellect and sense of religiosity of the person in question. The more religious and God-fearing the person is and stronger his faith, the more cautious he would be in this area.
- 4) As for those people, who because of their business compulsions or in order to protect their wealth or who in times of national calamities, deposit their money in the banks for a bright future, or buy insurance policies or buy a share in the provident fund, it is mandatory for them to consider only the principal amounts as their own money and reserve, even from this principal amount, 2.5% as the annual *Zakat* fund, without which, this deposited money would be impure and prohibited for them if they are true Muslims and not materialists and worshippers of wealth.

- 5) It is not lawful to leave the amount of interest gained from bank or insurance company or provident fund with the capitalists, because this would strengthen these evilmongers. The correct manner would be to spend the money over the poor and the down-trodden, who are in the same situation as the person for whom eating forbidden food has become lawful²⁰
- 6) All those profits made in business and financial transactions, which come under the definition of interest or when there is an element of doubt in them and avoiding them is almost impossible, only then must the way be adopted mentioned in point number 5. An honest Muslim should not set his eyes on procuring more and more profit, but rather be concerned with repelling evils. If a Muslim fears Allah and believes in the Day of Judgment, then escape from the Wrath of Allah and keeping away from the unlawful should be dearer to him than the growth of business and financial profits.

These relaxations are for individuals, and could be extended to include a nation, if it is under the domination of other nations and is not able to run its own economic and financial system. But for an independent, sovereign Muslim nation which has the rights to solve its own problems, it is not correct to demand any relaxation in the case of interest, until it is proved that all the financial and banking transactions, the nation's trade and industry cannot be run without accepting interest based finance and also when there is no other alternative besides interest. But if this proposition is theoretically and practically incorrect, and a financial system can be created and run successfully under the aegis of Islam, then to keep insisting on adopting the Western capitalistic methods only implies that one has decided to rebel against Allah.

²⁰ I consider this suggestion also correct for the reason that in reality, interest comes from the pockets of poor people. The real source of interest for government / national treasury or bank or insurance company is the very pockets of the poor.

PRACTICAL METHODS FOR REFORMATION

We must now answer this question: Can a new financial system be established by abolishing interest that would be equipped to meet the needs of a contemporary and developed society?

Few Misconceptions

Before starting any discussion over this issue, it is necessary to clear some of the doubts which create confusion in the minds of people not only in this matter, but in every issue related to the practical reformation of domains and systems of human life. The first and foremost misconception is the very same which is mentioned above. In the previous pages, it has been proved theoretically that interest is something that is wrong and evil. Proofs from the Holy Scriptures were also presented that Allah and His Messenger (pbuh) have forbidden all types of loans. If these theoretical and scriptural evidences are to be accepted, then after that, people who ask “can business run without it (interest)?” or “is it even possible (to think of an economic system that is ‘interest-free’)?” They (by asking such questions) are implying that even Allah (God forbid) is not free from faults or Islam enjoins certain righteous deeds that are impractical and impossible to implement in real life. This is actually a vote of no-confidence against nature and its system. It means that we live in such a corrupt and weak universe that some of our real needs are tied to mistakes and evils of others and the doors of certain good and virtuous deeds have been shut on purpose. Or, if you even go beyond this, then you might reach the

conclusion, that nature itself is so twisted that whatever is wrong according to the laws of nature, is actually beneficial, imperative and practical and whatever is right according to the laws of nature is harmful, unnecessary and impractical.

Do our philosophies, our sciences and our historical experiences prove the temperament of nature to be deserving of such mistrust? Is it true that nature is a supporter of destruction rather than construction? If this is case, then we should fold up all our discussion regarding the health and mistakes of things and then simply retire from life itself, because after this, no ray of hope would remain for us in this world. But if the universe and our nature do not deserve this suspicion, then we must avoid this way of thinking that: "Yes! It is wrong, but there is no other way" and "this is right, but it doesn't work out"!

The fact remains that every method and system that gains currency and acquires ascendancy in the world is bound to dominate human affairs and it appears invincible and looks impossible to replace it with another system. This is the case with every system which is currently dominant, regardless of the system being right or wrong. It is difficult to effect changes therein and the real reason for the ease in following it is nothing other than the fact that the system has become trendy and the 'fashionable' or the 'politically correct' thing to do. But the silly and naive people get deceived by thinking that human affairs can be conducted only by the system which is currently dominant even though it has many flaws and other than this, there is no other possible and viable way of doing things.

The second misconception in this matter is that people do not understand the actual cause of the difficulty in carrying out change. And out of no reason start criticizing the suggestion for change. It would be a wrong estimation of human endeavor, if you assume any proposal against the existing system to be impractical, especially in a world where the highly

revolutionary proposal (by Communism) of denying the right to personal property by imposing state control over personal property, did prevail. Then would it not be immature to say that in such a world where bizarre proposals are made to prevail, the highly reasonable ideas of abolishing interest and organizing *Zakat* funds would be impractical? But of course, it is true that replacing the existing system with another cannot be done by any mediocre and incompetent group. This job can only be accomplished by those who fulfill the following two conditions:

- i. Either, they have really reneged on the old system and truly believe in the proposal according to which they intend to bring change in the system of life.
- ii. Or, instead of a dogmatic mentality, they have a creative mindset. They should not have just a bureaucratic type of thinking that is sufficient to run the old system as its old masters. But rather they should have a bold approach that skips the beaten path and is novel and bold enough to create new ones.

Those, who could meet these two conditions, have the ability to even make hard core revolutionary ideological proposals like Communism, Nazism and Fascism work. And those who cannot meet these conditions cannot even implement the most reasonable changes proposed by Islam.

There was one more misconception. When a plan of action is demanded from people to offer proposals of reformation and present constructive criticism, apparently for many the plan signifies something imaginary and theoretical whereas a plan is always implemented on the field and is not meant only to be of academic value. The real theoretical work is to highlight the flaws and ill-effects of the present system with proof and evidence, and to prove the reasonableness of the proposal of reformation that they intend to implement. Once this is accomplished, the only theoretical work left with respect to the

practical problems is to offer a general idea of how to eliminate the wrong methods and ideas of the old system, and how to make the new proposals work? As to the question of what would be the detailed form and the specific stages for the dismantling of the old system, and how would the problems at every stage be tackled, then such issues can neither be known in advance by anyone nor can we have an answer to them beforehand. If you are convinced that the existing system is really wrong and the proposal of reformation is totally reasonable, then come forward and handover the reins of power to those who have faith and creative intelligence. After that wherever problems arise the solution would be directed on that front. How can a job which must be demonstrated in practice be only discussed theoretically?

Now, after this clarification, it is obvious that whatever we present in this chapter will not be detailed plan of an interest-free financial system, but merely a general concept of the practical way of purging out interest from the public financial system and the solution to those bigger problems that apparently come to mind as soon as the expurgation of interest is mentioned.

The First Step towards Reformation

It has now very clear from the above discussion in the previous chapters that the hazards of interest affecting the economy and financial system are only because interest has the backing of the law. Obviously, when the door of interest is open for a person, then why should he be inclined towards giving a goodly loan to his fellow neighbour? And why should he participate in the risky business of profit and loss (when he has a fixed and guaranteed return on investment in the form of interest)? Why should he extend a sincere helping hand to meet the nation's requirements? Why should he not handover his wealth to the banker from which he expects a fixed percentage of profit just by sitting at home? By permitting the evil

inclinations of human nature to grow and play a deadly game, you cannot expect to stop its growth and hazards merely by preaching, sermonizing and through fervent appeals. Again here, the matter is not just limited to giving free reign to this evil inclination, but over and above the law too comes to its rescue, and the government itself is cultivating and running the financial system on this evil (called interest). How then in this situation, is it possible to bring even partial changes and reformation that could prevent the spread of this evil? The only way to block this evil is to close the door which is letting it in.

Those who think that when an interest-free financial system is prepared, then, either interest would come to an end all by itself, or it would be legally closed down, actually want to put the cart before the horse (do things in the wrong order). As long as interest is backed by the law, and as long as the temptation exists for the banker to collect savings from every home and run it on interest, till then, it is not possible for an interest-free financial system to come into existence and prosper. Therefore, if the elimination of interest is tied up with the notion that first a new financial system would be established and grow to its fullest which would then replace the present interest-based system, then believe me, interest can never be eliminated in this way, till the Day of Judgment. Whenever we decide to do this job (of abolishing interest) then the first step to be taken is to legally ban interest. Then, automatically an interest-free financial system would come into existence, a necessity, which is the mother of invention, would start to create new avenues for this system to grow and expand in every corner.

The evil proclivity of human nature whose ultimate outcome is interest, its roots are so deep and its demands so powerful, that partial operations and frail strategies cannot eliminate it from any society. For this purpose, we must deploy all those strategies suggested by Islam and the evil of interest must be confronted with the same vigour as Islam desires.

Islam does not limit itself to mere moral condemnation of interest. It declares it to be forbidden as a matter of faith. On the other hand, if Islam attains political power and establish its dominion then it prohibits interest through national laws, nullifies all interest-based contracts, declares the giving, taking, documenting of interest and witnessing over it to be a penal offence liable for judicial prosecution and if this business of interest is not controlled by penal laws, then it pronounces even capital punishments and seizing the properties of its perpetrators. Also, by making the collection and distribution of *Zakat* by the government to be mandatory, Islam lays the foundation of a parallel financial system. And alongside these strategies, it reorients the masses through education, training, and propagation so that their inclination and fondness (for interest) can be suppressed which is actually responsible for interest-mongering. In contrast those attributes and inclinations could then be activated through which, the spirit of sympathetic and generous cooperation can be promulgated in society.

The Consequences of Blocking Interest

Whoever sincerely and seriously wishes to eliminate interest must follow exactly the above mentioned road-map. The legal prohibition of interest alongside the collective system of collection and distribution of *Zakat* would lead to the following three results:

- 1) The first, foremost and most important result would be that the present malignant form of the public wealth would be replaced by its healthy and correct version.

In the present form, the wealth accumulates in a few hands because our social system encourages and pushes the tendency towards stinginess and wealth-hoarding, which is naturally found in every person to a certain degree, to its extreme limits. Through fear and temptation, it convinces

the person to spend as little as possible and hoard as much as possible. It instills fear in him that: "if you do not hoard wealth, then no one can come to you in times of distress". It tempts him to hoard wealth, because he can receive its reward in the form of interest. Due to this double instigation, all those who earn beyond their needs are forced to stop their spending the extra income and hoard it instead. The result is that the demand and consumption of trade commodities decreases much below the recommended limits and as their disposable incomes decreases, so do the possibilities of growth in trade, industry and the creation of public wealth. In this way, what a few gain results in a decline of the economy. A single person who increases his savings in this manner thus disables a thousand other people to earn anything let alone save.

In contrast to this, if interest is stopped, and by organizing the *Zakat* fund, the government assures the people of the availability of aid in times of distress, thus removing the natural causes and incentives to be stingy and hoard wealth. People would then not only spend generously but also provide enough purchasing power to the indigent with the help of *Zakat* fund. This would lead to growth in trade and industry resulting in employment generation. Employment would result in increased incomes. Thus in such a situation, trade and industry would make such profits that they would not require any foreign investment as is the case today. Then it would be very easy for the economy to get whatever funds required for investment as compared to the present situation. This is because, some of the people, would save their money due to their inborn weakness but most of the people would be forced to save, because of excessive income and general peace of the society. At that time, these savings would not be due to any fear, stinginess or temptation, but rather due to the fact that people would earn more, spend generously in the categories made lawful

by Islam and yet even after that, much more would remain with them. And no needy person could be found to take this saved wealth. That's why they would be forced to save and be ready to give it to their government, trade, industry and the neighbouring countries.

- 2) The second consequence would be that the accumulated wealth would be in circulation rather than getting frozen at one point. And the various domains of the economy would keep getting the required funds as per their needs. In the present system, it is only the allurement of interest which attracts capital towards trade, but this allurement is also responsible for preventing investment. Because of this, capital is blocked, waiting to get invested in projects that fetch more interest rate. But this is exactly what corrupts the nature of capital. When trade wants capital to come towards it, capital gets haughty and begins to harden its conditions. And when the situation is the opposite, funds and investment follow trade and are ready to be used in any business good or bad on just about any condition. But when the gates of interest are legally closed and all the accumulated wealth is levied with 2.5% of annual *Zakat*, then this bad temper of capital (to sit in vaults unutilized) would come to an end. It itself would want to get invested in any good business enterprise at reasonable conditions and to be always in circulation without stopping at any point place or time.
- 3) The third outcome would be that finance gets separated into two categories: Trade and Debt. In the existing system, the capital is almost always provided in the form of a loan. Whether the borrower is an individual or an institution, whether it is for a profitable enterprise or for non-profitable purpose and whether it is for a short-term need or long-term, in every case, the money is provided on the only condition of loan with a fixed rate of interest. But when interest gets prohibited, the category of loan would be

restricted to the non-profitable enterprise or short-term needs, with respect to trade. And its provision would have to be done on the basis of a goodly loan. As to the other objectives, whether these are trade and industry or governments and public enterprises, the supply of capital is through "*Mudarabah*" i.e. profit sharing instead of a loan. Now we shall discuss in brief how these two departments function in an interest-free financial system.

The various methods of providing loans in an Interest-Free Financial System

Let us first take up the question of providing loans or the supply of credit. The most important concern regarding the prohibition of interest is: would there now be an end to the business of providing loans and the procurement of credit for meeting various financial requirements? We will demonstrate that with the elimination of interest, not only would the supply of loans continue, but rather, it will be easier and even better than the existing system.

Personal Loan

In the existing system, the only way to get a personal loan is either to visit a loan-shark (moneylender) if you are poor or to go to a bank if you are rich. In both the cases the loan-seeker can get any amount of loan provided he manages to convince the loan-shark or the banker that he would pay back the principal amount and the interest regularly regardless of the purpose of the loan i.e. for some immoral activities or some extravagant expenditure or for some real necessity. As opposed to this, the loan-seeker will not get even a penny from anywhere if he fails to convince the lender on the assured regular payment of principal amount and interest even if the requirement for the loan is as serious as money for the funeral of a deceased. And then, in the existing system, the problems

of the poor and the prodigality of the rich are both excellent opportunities for the money-lenders to make profit. Besides selfishness, cold-heartedness has reached such an extent that neither any concession is shown in extracting more and more interest from the person entangled in debts, nor does anyone have the heart to at least examine the condition of the person while retrieving the principal amount and interest. These are the "conveniences" provided by this system to get personal loans. Now, take a look at Islam's interest-free charitable system in providing loans.

First of all under Islam, the door to give loans for prodigality and immoral activities would be completely shut because providing loans is not for the sake of greed and for earning interest. In such a situation, the loan transaction would automatically be restricted to reasonable necessities and only those amounts would be given or taken which appear clearly suitable under various conditions. Then since, in the Islamic system, it is not legitimate for the lender to make any kind of profit from the borrower, the recovery of the loan would become easy. Even a person of low-income could quickly and easily relieve himself from the burden of the loan by paying in small installments. Any person, who mortgages his property or his valuables, would be utilized for paying back the principal amount instead of getting consumed in the payment of interest. In this way, the recovery of the loan would become faster. Even if after all these conveniences, if a person fails to repay the loan, then there is always the aid from the *Bait-ul-Maal* (the public treasury) for its payment. And if the debtor happens to die without leaving anything behind, even then, the *Bait-ul-Maal* would be responsible for the payment of his debt. Due to these reasons, it would not be difficult and inconvenient for the rich and prosperous to loan money to their needy neighbours which cannot be found in the existing system. Even after all this, if a person fails to get any loan from his neighbours or friends then the door of *Bait-ul-Maal* is always open for him. He could go there and get a loan for himself but it should be

clear to him, that *Bait-ul-Maal* is the last resort for him. From the Islamic perspective, giving and taking of personal loans are always an obligation of individuals of the society and it is also one of the criterions of a society's health that its individuals realize and fulfill their moral responsibilities of helping out those in need. If a person could not get any loan from his neighbours and is forced to turn to the aid of *Bait-ul-Maal*, then it is a clear sign of the deteriorating moral health of that society. As soon as such a case is referred to the *Bait-ul-Maal*, it will not be confined to the mere fulfillment of the borrower's need, but also, the incident shall be referred to the department of Moral Health. And immediately, they will concentrate on the diseased neighbourhood where there was none to help one of their residents in times of financial difficulty. The occurrence of any such incident in a virtuous and moral society would create the same panic as is created in a materialistic society at the outburst of cholera or plague.

Another way that could be adopted by the Islamic system for the provision of personal loans would be to include a right granted by the law to the employees and labourers of companies and business institutions, to provide them loans in times of emergency or acute financial difficulty. Likewise, the government itself should admit such a right for its own employees and guarantee it with generosity. The nature of this matter is not just moral, but has an economic and political manifestation which is equally important. By providing interest free loans to the employees and labourers, you would not only be doing just one good deed, but also eliminating one of the major factors which bothers your workers, troubles them, aggrieves them, afflicts them with physical illness and causes their mental and material destruction. Their inner peace and mental satisfaction would increase their work potential and their contentment would save them from destructive and radical philosophies. From the "bank account" perspective, the profit of such companies might not be very high but, if anyone blessed with insight can easily see, that on the whole, not only

for the society, but for every individual, every capitalist, every industrialist and for every economic and political institution, its profit would be much more greater and valuable than the interest which is extracted by the materialistic society merely on the basis of its reckless myopia.

Commercial Loan

After this, let us take up those loans which the businessmen require frequently to meet their needs. Nowadays banks either offer short term loans directly or businessmen transact via Bills of Exchange.²¹

And in both the cases, banks levy a nominal rate of interest. No commercial transaction is possible without this surcharge. So the first thing businessmen are concerned about when they hear about the prohibition of interest are the commercial loans for their day-to-day needs. If banks do not have the allurement of interest, then why would they loan money to us and why would they accept Bills of Exchange? But the question is why shouldn't the banks that have these huge interest-free deposits and also have millions of businessmen themselves giving interest-free loans and the bills of exchange? If the banks do not agree to this in a straight and simple manner, then they would be forced through the law to offer such conveniences to their customers. This should be included in their obligations. Actually, for this work, the

²¹ The Bills of Exchange, which are known in Urdu as *Hundi* or *Hawalah* are what Islamic Jurisprudence (*fiqh*) calls "Safaatij". According to this kind of transaction, businessmen who frequently deal with each other and have a common Banker, exchange on credit a large quantity of goods among themselves without paying any cash. In return they give to the other party an undertaking or *Hundi* for the settlement of a loan within a stipulated period of time. If the party concerned is willing to wait, all is well and good, but in the event of their being in need of money during that period, they submit the *Hundi* or Bill of Exchange to their bank to get the required amount.

deposits of the businessmen would be enough, but in times of need, it would not be wrong if banks could lend from some of their own capital for this purpose. Anyhow, in principle, it is absolutely reasonable to ask why those who are not taking interest should give it. And from the perspective of the economy, it is also beneficial that businessmen should keep receiving interest-free loans to meet their daily needs.

As to the question on how the banks would meet their expenses if they do not charge interest in such transaction? Then the answer is that when all the deposits in the current accounts remain with the bank, without any interest, then it would not cause any loss if interest-free loans are given from those very deposits. Because, in this case, whatever the smaller or bigger expenses of maintaining accounts and office works a bank may have to bear, it could easily make profits more than that is required that would be deposited with them. Supposing it does not work out, even then there is no objection, and a bank can charge the depositor who are businessmen a monthly or half-yearly fee enough to meet these expenses. As compared to interest, this fee would be far cheaper and these businessmen would bear it happily.

Non-Profit requirements and other needs of the Government

The third category is of those loans which the government takes from time to time for their immediate requirements, for development and infrastructure needs and sometimes for funding wars and defense expenditure. In the existing financial system, for all these purposes, all of the money comes from entirely from loans and that too interest-based. But in the Islamic Financial system, it is perfectly possible, that here the government announces its need, and the citizens themselves came forward offering personal donations, because the prohibition of interest and the organization of *Zakat* would make them so relaxed and satisfied that they would not hesitate

to give away their savings. Even after this if the government fails to get required amount of money, then it would ask for loans and the people would give goodly loans generously. And even if its requirements are not met through the above mentioned ways, then the government could take the following steps:

- i. Utilize the *Zakat* and *Khums* funds.
- ii. Demand a portion of the deposits from all the banks by way of an ordinance/decree as the government does during conscription and requisition.
- iii. Ultimately, it could print currency in accordance with its requirements which is essentially a way of seeking a loan from the nation itself. But it should always be considered as the final resort taken only during inescapably critical times, because its consequences are extremely unpleasant.

International lending

Now what remains to discuss are the loans from foreign agencies and international financial institutions. In this matter, it is absolutely clear that in the existing interest-based system, there is no way we can expect to get even a penny without interest. We should therefore try to avoid taking any kind of loan from foreign countries, at least till as time we are able to present a model to others showing how to give interest-free loans to our fellow-neighbouring countries. As to the question of giving loans, then after going through our previous discussions, there would be no hesitation for any man of insight to admit that if we could courageously establish a righteous financial system on the principles of the prohibition of interest and organization of *Zakat*, even once, then undoubtedly our economic position would become so strong, that not only would we not require any foreign loan, but rather, we would be able to give interest-free loans to our needy

neighbouring nations. The day we present such a system to the world, it would be a revolution in modern history not just in the financial and economic domain but also from the political, cultural, civilization and moral perspective. A new possibility would be created and the transactions between us and the other nations could be made on interest-free basis. And it is quite possible, that other nations, one after the other might sign agreements with us that they would not charge interest to us on any kind of loan. And the day is not far when we shall see international opinion expressing its unanimous hatred against interest, as was expressed by England in 1945 during the Bretton Woods Conference. This is not just a fantasy. In fact even today, the intelligentsia is concerned over the vicious effects of interest-based international loans on the politics and economy of the world. If the developed and prosperous nations forsake this way and make sincere and earnest efforts to make the underdeveloped and poor nations stand on their feet, then it would have a double benefit. From political and civilization perspective, instead of mistrust and conflict, there would be love and friendship. And from economic point of view, in comparison to sucking the blood of a poor and bankrupt nation, doing business with a prosperous and rich nation would be more beneficial. These words of wisdom are being contemplated and talked about by the intelligentsia but the only missing ingredient is that the nation should first eliminate interest from its own house and then proceed to lift this curse off the international transactions.

Loans for Profit

After understanding how funds are utilized for loans, let us take a look at the funds utilized for business in the Islamic system. As we have pointed out earlier, the prohibition of interest would ensure that the investors cannot insulate themselves from the labour employed and risk undertaken by

business and hence will not be able to utilize their capital with the assurance of complete protection and fixed profit over it. And similarly, *Zakat* would make sure that they cannot withhold their capital and sit like serpents over this pile of wealth. Furthermore, under a genuine Islamic government the door for extravagance and prodigality would be closed and so that their earnings would not drain out and fritter away. After this, all those, who earn more than their necessities have to inevitably take any of the following roads:-

1. If they do not seek more income, then they could give away their savings for public welfare. Either they could give it as donation for any good work, or as charity or gift to the national institutions or with selflessness and sincerity, hand it over to the Islamic government so that it could be spent on development works, welfare projects and for the reformation of the society. And the last category would especially be preferred if the administration of the government is in the hands of those who are trusted by people. In this way, there would be a constant and (interest) free supply of large amounts of capital to the government and other such social institutions for public interest, developmental projects and welfare activities. Let alone interest or profit, there would not be any burden on the people for the payment of the principal amount.
2. If they do not want any extra income and would want to save their extra wealth, then, they could deposit it in a bank. And the bank, instead of keeping it as deposits, would give it as a loan on its own responsibility. In this case, the bank would guarantee that it would pay them back their own deposited money whenever asked or at the determined / decide time-period. Alongside this, the bank would also have the right to invest this loan in business and reap the benefits. There would not be any portion in that profit for the depositors; it would belong entirely to the bank. Imam Abu Hanifah's business was based to a large

extent on this very Islamic perspective. Because of his honesty and extraordinary credibility, people used to deposit their money with him. The Imam, instead of keeping these deposits with him, used to take them as loans and invest in business. His biographers say that at the time of his death, 50 million dirhams of depositor's capital was invested in accordance with the above mentioned principle. The Islamic principle is that if something is deposited with a person, then it doesn't carry any warranty. In contrast to this, if the same thing, in kind or cash is given as loan, then the debtor has the right to use it, make profits from it, and repay the loan at its time. Even today, the banks could work on this principle.

3. If they are desirous to invest their savings amount in any profitable enterprise, then they have only one way to do this: to invest on the principle of "*Mudaarabah*" (proportionate partnership in profit and loss, whether via government or banks. If they like to invest by themselves, then they have to meet the conditions of partnership in the business. Of those conditions one important condition which has to be determined by way of law is the proportion of the distribution of profit and loss between the partners. Correspondingly, the only way of participating in Joint-Stock companies is simply by purchasing the shares. Bonds, debentures and other such things, through which, a purchaser receives a fixed amount from the company, would not be permitted at all.

If they want to invest through government, then they would have to become a partner in any government scheme related to public welfare. For instance, suppose the government wants to launch a hydroelectric power scheme. By making an announcement, it would invite the public to participate in this scheme. Those individuals or institutions or banks that invest in it, would become partners with the government and keep receiving a proportional amount of share from the profits of the

business. If there is a loss, then it would be distributed proportionately between the parties including government. And the government would also be entitled to gradually and sequentially purchase public shares until, in 40-50 years, the entire scheme becomes a purely governmental enterprise. But, as in the current system, even in this proposed system, it is third scenario which would be the most feasible and beneficial. That is people investing this capital in profitable enterprises through the banks. That is why we want to explain it with more clarification so that a clear picture may emerge for people to see how the banking business can run even after the elimination of interest and how people, looking for profit could benefit from it?

The Islamic Mode of Banking

Whatever we have discussed regarding banking does not imply that all its activities and the work they carry out is completely wrong or illegal. Actually, banking is also a beneficial institution among the many fostered by contemporary civilization. However a small inclusion of just one satanic element (interest) has made it dirty and sullied its image. Firstly, banks discharge many lawful services that are beneficial and indispensable to meet the cultural, civilization and trade requirements of the present age. For example, the transfer of cash from one location to another and waiting for its payment, facilitation of monetary transactions across nations, protection of valuable assets, issuance of letters of credit, travelers cheques, arrangements for selling company shares and many more agency services. All these banking services relieve us of the hassle of handing these activities and outsourcing them to the bank for a small commission. These activities have to be carried out all the time and require an independent institution. Banks are also extremely important for trade, industry, agriculture and every domain of the economy and considering today's conditions banks perform the function

of accumulation of capital. Thus surplus funds of society be accumulated at one central reservoir instead of being scattered and from there be easily supplied to every domain at all places all the time. Besides, it would also be highly convenient for the masses to deposit their surplus capital in this central reservoir instead of looking for separate opportunities of investment in profitable enterprise. Their capital can be invested from this central reservoir, in a reliable and efficient manner with all the profits reaped from those investments getting distributed among the shareholders. And over and above that, because of constantly working with finance, the administrators and employees of banks, develop a certain expertise and insight into the financial business, which the entrepreneurs, industrialists and other professionals cannot develop. This expert financial insight is in itself a valuable asset and could prove to be beneficial provided it does not become a weapon to serve the interests of money-lenders nor should it be used for the aggrandizement of businessmen. But the thing which has transformed all the benefits and utility of banks into an ugly and malicious evil effecting the entire civilization is "interest". Alongside interest, the biggest and vicious element that penetrated the banking system was that the capital started accumulating in the hands of a few due to the alluring nature and might of interest. It practically became the wealth of few selfish capitalists and they utilized this wealth in extremely anti-social ways. If we succeed in eliminating them, then banking would not only become a clean vocation, but also highly profitable for civilization then the present conditions and it wouldn't be a surprise that even for the money-lenders themselves, it could prove out to be far more profitable than today's interest-based system.

Those who think that after the prohibition of interest, capital could never get deposited in banks are actually mistaken. They think, if there is no hope of getting interest, then why would people deposit their surplus wealth in the banks? When, at that time perhaps not interest, but the hope of

getting profit would definitely be there and since the possibility of profit is indeterminate and unlimited therefore compared to the general interest rate, as strong is the possibility making less profit, so strong is the possibility of making more profit. Alongside this, the banks would be discharging all those services as usual for which the people turn towards the banks. Now, it is absolutely certain, that even after the prohibition of interest, capital would still come to the banks in the same amounts as before. In fact, since every business would get greater boost at that time, employment rate would rise and more income would be generated, hence compared to the present conditions, more surplus wealth would get deposited in the banks.

So, whatever portion of the deposited capital is in the current accounts or transactional accounts, banks cannot invest them in any profitable enterprise as it is the case now. There would be used in two major areas: day-to-day cash transactions and issuance of interest-free short-term commercial loans and bills of exchange. As to the capital which is deposited for longer periods of time, then it would definitely be of two types: First type is of that capital whose owners would just want it to be protected. This money could be invested in business by the banks in the form of loans, as we have explained earlier. The second type is of that capital whose owners would want to invest it in the business through the mediation of banks. Instead of keeping these as deposits, banks will have to make a partnership agreement with the owners of the capital. Then banks could invest this capital, alongside its other assets, in business, industrial enterprises, agricultural fields, public institutions and government projects on the principles of '*Mudaarabah*' and in this way, as a whole, there would be two great advantages: one, the interest or the money-lenders would get fastened with the interests of the business, therefore the capital would lend its support in accordance with the requirement of the business and those factors would nearly come to an end and which are responsible for creating cycles

of economic recession in the existing interest-based system. Two, the financial insight of the money-lenders and the industrial and business insight of the businessmen, which are always at logger heads with each other, would at that time cooperate and assist one another, which would be good for everyone. Then, after spending over the administrative aspects, the banks would distribute the profit made from these ways, among the shareholders and account holders according to a determined proportion. The only difference in this matter is, according to the present system, the dividends are distributed among the shareholders and interest is given to the account holders. But at that time, only the profit would be distributed among both the parties. Today the account holders get interest at a fixed rate. But at that time, no rate would be fixed rather whatever the profit would be made, whether more or less; it would all be distributed at a decided proportion. The risk of loss and bankruptcy which is present today would also be there at that time. Today, the risk and the possibility of unlimited profit as against it, are only restricted to the shareholders. At that time, these two things would become common to both the shareholders and the account holders. As to the loss incurred by banking that only few money-lenders control and govern the accumulated power of the capital deposited in the banks due to allurement of profit, then, to prevent this thing to happen the entire service of central banking should be discharged by the Bait-ul-Maal or the State Bank and through the medium of loss, it should establish its authority, control and interference in all the private banks to such an extent, where the bankers shouldn't have any opportunity to misuse their financial powers. After looking at the interest-free financial system presented by us, does any argument remain to say that the prevention of interest is not feasible?

APPENDIX I

IS IT LAWFUL TO CHARGE INTEREST OVER COMMERCIAL LOANS?

[This is the correspondence that occurred between Mr. Syed Yaqoob Shah, Ex-Auditor General, Government of Pakistan and the author of this book (Syed Abul Ala Maududi).]

The first letter from Syed Yaqoob Shah

I made a careful study of your book "Interest". It stirred up a few questions in my mind. Although I tried hard, I could not get satisfactory answers. That is why I have taken the liberty to bother you for providing me those answers and I hope that you will kindly oblige:

- 1) It is not clear from the examples provided by you in part I of this book (3rd Edition) regarding the *Riba* (interest) practiced in the days of *Jaahiliyyah* (Ignorance) and whether people of those times would take loans for doing business or not? As far as my knowledge goes, the trend in Europe, of doing business by taking loans is of a later occurrence. Can the author name any authentic book from which we could know whether commercial interest was customary in Arabia or not?
- 2) It also appears from the same part of the book that the various Hadith mentioning *Riba al Fadl* (i.e. interest in excess) are of earlier occurrence, even before the revelation of the Quranic ayah prohibiting interest (Surah Al Baqarah). Would it be appropriate to come to the conclusion that it is not *Riba al Fadl* that carries the

Quranic prohibition and the Quranic warning? Or in the words of Sir Syed Ahmed Khan "actually it is a matter of corrupt business and it does not come under the interpretation of that *Riba* which is mentioned in this ayah of the Quran". Hope you will answer these questions..

Answer (*Syed Abul Ala Maududi*):

It is not mentioned clearly in any of the books that commercial interest was prevalent in Arabia in the days of *Jaahiliyyah* (Ignorance). But we do find that the farmers of Madinah used to take interest-based loans from the Jews. And even among the Jews, there used to be interest-based transactions. Also, the people of Quraysh, who were mostly merchants, used to give and take interest on loans. The need for loans arises not just for the poor people to meet their personal requirements but also for those engaged in agriculture and business. And this is not a new development but is in practice since ancient times which has gradually evolved into the modern financial institutions found today. The ancient system was mostly restricted to the individual transactions, but the difference between the ancient and the modern system is that the scale of credit is very large and also invested in bigger enterprises.

It is true that the Hadith mentioning '*Riba al Fadl*' is older than the revelation of the ayah of Surah al Baqarah prohibiting interest. However the "Prophetic Saying" (mentioning '*Riba al Fadl*') came after the ayah of Surah Al-e-Imran. And this ayah has made the intention of the Quran loud and clear that interest is an evil that ultimately has to be eliminated. And precisely for the purpose of laying the ground work, the Prophet (pbuh) suggested those retypes in the economic affairs which are placed under the heading of '*Riba al Fadl*'. In these different Hadith, the word *Riba al Fadl* is clearly used and the prohibitory words used therein undoubtedly indicate that it is forbidden. However it is true that the interest forbidden by the Quran refers to the interest charged over a loan and not the

interest charged for hand-to-hand transactions. And the jurists have made it clear that *Riba al Fadl* is not the '*Riba*' which is forbidden in the Quran, but rather it is like a preemptive step for the prevention of interest which is termed as the "way of prevention" in the terminology of the jurists.

The second letter from Syed Yaqoob Shah:

The way in which you have given such detailed answers to my questions, has encouraged me to once again trouble you to ask a few more questions:

In the Holy Quran, the commitment of no other sin is as severely rebuked and warned against as devouring interest. That is why I think the scholars should refrain from including any type of interest in the category of *Al Riba* unless they are absolutely certain that this type of interest was prevalent during the time of the Prophet (pbuh). You have based your opinion regarding the prevalence of commercial loans in pre-Islamic Arabia on the following points:

- 1) The agriculturists of Madinah used to take interest-based loans from the Jewish money lenders. I would like to say, with due respect, that such types of loans shouldn't be called as "commercial loans". Such types of loans are taken by the needy and the downtrodden. The "commercial loan" for agriculture is a modern invention. From the day machines were put to use for agriculture on a large scale, the landlords began to feel the need for taking "commercial loans". In the olden days, the loans taken by the agriculturists were out of helplessness and for the purpose of meeting their necessities of life.
- 2) The Jews themselves used to mutually deal in interest. But this doesn't mean that their loans were meant for commercial purposes. The majority of the Jews living in Arabia were either agriculturists or money-lenders as had been the case in Europe for a long time. It is possible that

the Arabian Jews used to give loans to both the rich and the poor to meet their personal needs.

- 3) The people of the Quraysh who were mostly merchants used to give interest-based loans to one another. What I would like to say regarding this is, that from the examples of the type of interest charged by the Quraysh, it is not clear whether the money was taken as loan for commercial purposes. If any such example has come under your study, then I would request you to kindly provide it to me. Business in those days was conducted either through personal capital or "*Mudaarabah*". Everyone used to participate in the trade caravan of the Quraysh. It is said that even a dinar or half a dinar was also allowed to be invested. Seemingly, there shouldn't be any need to take loan for doing business. As I have already mentioned, commercial interest was of later occurrence in Europe. From the 5th to the 10th century, we find no custom of charging interest. This does not mean that even Arabia was in the same condition. But this appears necessary that we should do research on this topic before we jump to the conclusion about the existence of commercial loan in the pre-Islamic Arabia. The Arab and other historians have mentioned a very detailed description of the conditions of the Prophet (pbuh). Isn't their silence over the subject of commercial interest indicative of the fact that such a type of interest was not prevalent at that time? Especially when the mode of business was such that every person rich and poor had the opportunity to participate in it? Perhaps you might have seen the translations of Surah Al Baqarah Ayat 276 and 277 by Maulana Abul Kalam Azad. He understood the meaning of *Al Riba* to be 'that amount which is taken from a needy person'. Has any other scholar or commentator of the Quran subscribed to this view? If the elders of the religion are unanimous over these meanings, then a very big and important issue would be resolved.

Answer (*Syed Abul Ala Maududi*):

I agree with you that anything whose prohibition is not stated unequivocally in the Quran should not be brought exactly to the same level of something whose prohibition is stated in plain and obvious words. But in my view, the way you are applying this rule to the issue of *Riba* is incorrect. Your argument is based on two points:

1. *Riba* means only that mode of loan-transaction which was prevalent in era of the Prophet (pbuh).
2. Since commercial interest wasn't prevalent at that time and it was only the poor who used to take interest based loans, hence it is only the second type which is prohibited by the Quran and not the first. These two notions are actually wrong.
3. The reason why the first point is wrong is that the Quran was not revealed to lay down the injunctions for only those matters which were prevalent in Arabia and the world at the time of its revelation. Rather, it was revealed to prescribe those principles which would differentiate the right from the wrong and the legitimate and the illegitimate until the Day of Judgment. If this is not accepted, then the fact of Quran being the eternal and universal guide would be rendered meaningless. Furthermore, in this case the matter wouldn't be limited to only one type of *Riba*. A person could state that the alcohol which is prohibited by the Quran is actually the one which was prevalent at that time in Arabia. The theft which the Quran has forbidden refers only to that which was conventional at that time, whereas the actual matter pertains to the prohibition of alcohol and theft and not to the prevalent types. It is the essence of which is forbidden and it is that the lender stipulating extra amount from the borrower over the given loan. In whichever loan transaction this essence is found, the law of prohibition would be applied to it. The Quran

has categorically prohibited *Riba*. And nowhere has it said that interest is forbidden only for that person who takes a loan in critical conditions to meet his needs.

The reason why the second point is wrong is that first of all only this form of commercial interest is new, that only initial capital be borrowed as loan for business. Otherwise the giving and taking of loans by businessmen from each another or from the money-lenders to meet their business requirements has been in practice since times immemorial. And also there is no proof of it being a new phenomenon. And taking non-commercial loan from a wealthy person in order to provide bread and butter to one's family out of helplessness either due to illness or poverty is also not the only reason why a person takes loan. There are numerous other reasons too. For example marrying off one's children or constructing a house. Taking even such types of loans has been in practice in every age. Then which of these numerous types of loans would you include under the law prohibiting and which of these would you keep out? On which principles would you be doing this? And from which words of the Quran would you be deriving these principles? The reason why no differentiation is found between commercial and non-commercial loans in the business customs of the pre-Islamic and early Islamic periods is that the concept of such a differentiation and the related terms were not in existence in those times. For the people of those times, a loan meant all kinds of loans whether taken by a prince or a pauper and whether taken for personal needs or business. That is why they used to mention only the transaction of loan and the interest charged over it and never bothered to go in to the details. The correct intention of Maulana Azad is not that which you have understood. All he tried to do in his explanatory notes was to show the moral ugliness of interest, but this does not appear from his intention that by interest he means only that which is charged over the loan taken by a needy to meet his personal requirements. The meaning which you are deriving from Maulana's explanation is more than the

Quranic words. And no one from the jurists or the commentators has restricted this Quranic injunction prohibiting interest to only loans taken due to helplessness. In this regard, it would be better if you go through my tafseer "Tafheem ul Quran" vol. 1, pg. 210-18.

(Jamaadi al Aakhir, 1376 H. March, 1957)

The third letter from Syed Yaqoob Shah

As you have said, my argument is based on two points:

1. *Riba* means only that form of loan which was prevalent in the time of Prophet (pbuh).
2. Since the concept of commercial loan was conventional in those days, this form of interest doesn't come under the law prohibiting interest. You consider these two points to be incorrect. But these points are based on your own discussion mentioned in your own book "Interest", part I pages 34 and 35²².

You have said "the excess which the Quran prohibits is of a specific kind. That is why it referred to as *Al Riba*. Even before Islam, in the language of the Arabs, a specific type of transaction was called by this very terminological name... and since *Al Riba* is the name of a specific type of excess and it was well known and popular, no explanation is given in the Quran regarding it..." After this, we read those quotations which mention the examples of the *Riba* of *Jaahiliyyah* and then it is written: "these were the business practices prevalent in the then Arabia and it is to such kinds (of interest that) the Arabs used to call *Al Riba*. And this was exactly the thing prohibited in the Quran". I have said it already that from the

²²This discussion can be read in the present edition of this book. What I meant was that every kind of excess amount accrued over invested capital is not prohibited by the Quran. This excess is also made in business which the Quran has made lawful. The excess which is prohibited by the Quran is "Al Riba" that had a specific meaning known to everyone at that time.

examples provided in this book and other books, it is not clear whether the Arabs used to take loan for business and if no commercial interest was prevalent in Arabia, then according to your own arguments these business practices do not come under the heading of *Al Riba*. If I have committed any mistake in coming to this conclusion then I would request you to please inform me about it. And even the scholars have admitted that by *Al Riba* only that excess is meant which was customary in the then Arabia. Now the question which remains is: was any commercial loan actually prevalent in the Pre-Islamic Arabs? You have already answered it in the negative that no such custom is to be found in any of the books. That is why I have suggested that one must not base one's opinion on conjecture regarding a matter which is so serious that Allah has prescribed the severest punishment for it. Rather, one should try to find out the exact conditions (prevailing at that time in Arabia) to the extent possible. I have also said that it is a historical fact that there was no existence of commercial interest in Europe from 5th to 10th century B.C. I cannot refer to many books in this regard. Furthermore, I learnt from the books which I could access that in the then Arabia, business was conducted on either personal capital or on the principle of *Mudaarabah*. Of all the examples of business that I went through, I could never come across anything mentioning commercial loan. I was hopeful that by the erudition and depth of your study, you would guide me to a book which could tell about the real conditions prevailing at that time. But my hope got dashed. As I have said earlier, the biographers of the Prophet (pbuh) gave a detailed description of the conditions prevailing at the time of the Prophet (pbuh). But it is nowhere to be found that the people used to take loans for business. The people of the Quraysh tribe were merchants. 'Abbas (r.) the uncle of the Prophet used to loan money with interest, but to whom? If even a single individual of the business community was to give interest-based loan to the farmers dealing in dates, then would not these farmers think that the commercial interest was non-

existent? You have inquired about which types of interest are to be forbidden and which are to be allowed? All those types which were prevalent in pre-Islamic Arabia would be forbidden. As far as I have understood, in those days, loans were taken only for personal needs and emergencies. And most of the times the loan sharks used to rob these people and hence it was necessary to save these people. That's why *Al Riba* got forbidden. Condemning such type of interest is right and prescribing severest of the punishments is appropriate. As against these, interest should be lawful for those who take loans to invest in profitable ventures. Such type of interest is beneficial to both the giver and the taker. You would see, that most of the times, the debtor prefers these over *Mudaarabah*. It is very difficult for me to understand why the scholars brand this type of interest to be responsible for the severest warning of

حَرْبٌ مِّنَ اللَّهِ وَرَسُولِهِ

*"a declaration of war from Allah and His Messenger
(Al Quran 2:279)".*

According to the Islamic *Fiqh*, there should not be any conformity between the crime and its punishment. The objections raised over this type of interest are as follows: first, it creates a class of society which gets income without any hard work and hardship. This objection should also be leveled against those who have large real-estates and who not just waste their time in complete leisure but also lead their lives in excessive luxury. If Islam does not rebuke these idle men then why should those who charge commercial interest be the target of censure? Second, although the entrepreneur is in loss by taking loan on interest, but the lender charging interest makes profit. This objection is correct to a certain extent, but we must not lose sight of the fact that the reason why the entrepreneur takes an interest-based loan is because he is hopeful of a profit many times greater than the interest rate and most of the times the hope is fulfilled. Otherwise, commercial loans wouldn't

have gained such currency. The person giving such loans has to be content with a little amount of money gained at the end of the year, whereas sometimes the borrower investing in the loan in business makes huge profits and sometimes suffers loss. Such risks are taken for granted in the business world and it is neither such an ugly thing nor produces any kind of evil that it deserves the punishment of *Al Riba*. I think we should make a distinction between profitable and non-profitable types of interest. And the first should be made lawful and the other unlawful²³.

You have also said in your reply that "For the people of those times, a loan meant all kinds of loans whether taken by a prince or a pauper and whether taken for personal needs or business". Can you cite a reference in support of this statement? Since hundreds of years, commercial interest is in vogue in the whole world and people are kind of used to it. That's why it has become difficult to understand that there was a time when commercial interest was non-existent. As a matter of fact, it is proven by historical evidence that the interest-based transactions were not prevalent at least in the Western countries.²⁴

I am constantly troubling you (Syed Abul Ala Maududi). There are three reasons for this: one, millions of Muslims give and take commercial interest in practice. If they want to keep their businesses running in the face of ever increasing competition, then they have no other recourse than interest. I know that you do not subscribe to this view and have also suggested alternate ways, but I say it with due respect that your suggested ways are not practical given our intellectual and moral condition. The level of morality which you expect from

²³ The answers to all these questions are given in the chapter "Prohibition of Interest: Positive & Negative Aspects".

²⁴ Answer to this point is given in Appendix II

your co-religionists is actually an expectation of the Prophet (pbuh) and in our religion there is no room for any other Prophet. Hence I believe that our scholars should not be unnecessarily rigid in the social and cultural aspects of religion and should remember this statement of Allah يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ
 يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ“وَلَا يُرِيدُ لِكُمُ الْعُشْرَ”“Allah wills that you shall have ease; and does not want hardship for you”. Furthermore it is an established principle that whatever is forbidden by the law, its loss should be more than the profit as Allah has said regarding alcohol and gambling وَأَنْهُمْ أَكْثَرُ مِنْ تَفْعِيلِهَا“but the evil which they cause is greater than the benefit which they bring”. Commercial interest, in certain conditions could prove to be harmful to certain people, but it cannot be denied that most of the time it is beneficial and its benefits are more than its loss. That's why it should not be prohibited.

Two, nowadays there is such a dire need for funds to meet the military expenses (of a nation) that there is no other option besides taking loan. And this is a rock solid reality which cannot be ignored.

The third reason is personal. In the entire tenure of my government job, I have been saving for provident fund. And I received a large sum of interest on that which I have kept separately. I want to know whether this interest is lawful or unlawful. Will you be kind enough to guide me? If it's unlawful, then where am I supposed to use it? I have read all the books that I could lay my hands on to find out the permissibility or illegitimacy of this amount. But few points weren't clear. And I have ventured to put forth those questions to you. I hope you will forgive me for bothering you. I want satisfaction of the heart. But I will not bother you again after this letter.

Answer (*Syed Abul Ala Maududi*):

No doubt I have written that and I still stand by it by saying that the excess amount charged over the loan which was called as *Al Riba* in Arabia is the same which is prohibited in the Quran. But the meaning which you are taking from it is that exacting amount in excess to the principal amount found only in those types of loans which were prevalent in the then Arabia and declared by the Quran to be unlawful, whereas, I and all the other jurists have unanimously deduced not only the nature of loan but also the excess.

Let me explain to you with an example. At the time of the revelation of the Quran, the word "*khamr*" was used only for the wine made from grapes. And sometimes this word was also used figuratively for other types of wines. But when the injunction of the prohibition of alcohol was revealed, no one took the meaning that it meant only such and such alcohol. Or nobody took it to mean that it is not for those types which were consumed in Arabia at that time. But rather, they understood that this law is for the common denominator found in all kinds of alcohol and it is the intoxication that is found in all. And in which ever substance this intoxicating element is found, it would come under this law of prohibition.

In the same way, there were some kinds of loan transactions prevalent in Arabia. In all these transactions, the common denominator was the stipulation of excess amount to be paid besides the principal amount. And this precisely is what the Arabs called *Al Riba*. So when the injunction was revealed in the Quran prohibiting interest; no one took it to mean that only those kinds of loans would be prohibited which were prevalent in Arabia at that time. Rather, till today, all the jurists have understood that by this prohibition all those excess amounts are forbidden which are stipulated while giving loan regardless of the type of loan. The Quran itself has pointed towards it:

وَإِن تُبْتُمْ فَلَكُمْ رُءُوسُ مَا مَوَالُكُمْ

"but if you repent, then you shall be entitled to the return of your principal." (Surah Al Baqarah: 279)

This tells us that taking anything more than the principal amount is itself *Al Riba*. And it is exactly this which is forbidden by the Quran. If prohibiting some of the loan-types was the purpose, then it would have been said by way of reference, for example not to take anything extra over the loan given to a needy.

You will not find the stipulation of "necessity" or being "needy" in the Quran as a requisite to take loan but you are bringing this condition from somewhere else. And in an attempt to support your claim, the proof which you are producing is creating such a big basic blunder that not just interest, but in fact all the injunctions of the Quran would get restricted to the conditions and affairs prevalent in Arabia at the time of its revelation. Furthermore, by this argument you are taking a very big risk. You have neither any historical proof which says that people never use to taken loans for business purposes at that time. Nor have you got any proof that they did not take loans for running their business from each other or from the money-lenders. You have deduced these two points from: the general historical statement related to medieval Europe that business in those days was conducted either through personal capital or on the basis of *Mudaarabah* and the practice of commercial interest is of later occurrence when as a matter of fact such historical statements, which reflect a general condition, could never serve as proofs that no other form had ever existed in those times. What I have said in my letter is that "for the people of those times, a loan meant all kinds of loans whether taken by a prince or a pauper and whether taken for personal needs or business", is actually my opinion and its basis is that in my view, nowhere in the ancient scriptures, a loan is classified according to the condition or the purpose of the borrower, when in fact in every age, loans have

been taken for various purposes and never was taking loan limited to the poor and helpless. At this point, it is unnecessary for me to discuss whether charging interest over loans approved for profitable ventures should be considered legitimate or not? I have already submitted my proofs concerning this matter. In my opinion, you should not utilize the interest which you have received over your provident fund for your personal use. If you are not sure about it being lawful then it falls in the doubtful category. Why should a virtuous-hearted person like you take advantage of something of dubious nature especially when you are not in need of it? It is better that you yourself should start a fund with this amount which provides interest-free loans to the needy. I think all those people who have received interest or might receive interest should happily deposit their amounts in this fund. In this way a good amount of capital would be accumulated for this work.

(*Tarjuman ul Quran, Sha'ban-Ramadan 1376 H. June 1957.*)

The fourth letter from Syed Yaqoob Shah

In the June issue of *Tarjuman ul Quran*, you answered my questions related to commercial interest which make me audacious to ask for some more clarifications although I promised not to bother you (Syed Abul Ala Maududi) anymore.

1. You have written "In the same way, there were some kinds of loan transactions prevalent in Arabia. In all these transactions, the common denominator was the stipulation of excess amount to be paid besides the principal one (amount). And this precisely is what the Arabs called '*Al Riba*'. It is obvious from the above statement that even you have deduced the nature of the 'excess' from the types of loans prevalent at that time. And this is exactly what I have been trying to do. Therefore it is necessary to collect all the types of loans prevalent in the pre-Islamic Arabia and make

a study of the common denominator. According to you, the common denominator was the stipulation of the 'excess' amount to be paid besides the principal one in all these transactions. I say there was also another common denominator and it's the helplessness of the borrower over which unlawful conditions were imposed. In other words, there was a possibility of coercion and tyranny. Whatever the types of loans you have mentioned in your book, all of these have the possibility of coercion and tyranny. That's why this common denominator must also be included in the definition of *Al Riba* and without this inclusion, the definition would remain incomplete. The possibility of coercion and tyranny are specialities of non-productive and consumer types of loans and probable cause for the prohibition of *Riba*. But if it is proved that the Arabs used to take interest-based loans for productive enterprises, then my theory would be proved wrong. Because I have failed to find in my research the existence of any such loan in the pre-Islamic Arabia and hence I gave you this trouble. Hopefully, you would be able to tell me on the strength of your research the existence of loans taken for productive ventures in the then Arabia.

2. Of all the types of loans mentioned by you, there is only one which appears to have any relation with business and it is the statement of Qatadah "a person sells a commodity through another person and provides a time-period for its payment. If the period expires and the payment is not made, then he would give more time and increase the value of the commodity." Please consider at what time was this excess imposed? The time when the debtor would become unable to pay at the appointed time²⁵ and the lender would

²⁵This point is obviously wrong. There is nothing extraordinary about the fact that the wholesalers provide the goods to their permanent retail customers as loan with the time-period of one or two months for the payment without any interest and in case of failure in its payment in the given time-duration

be in a position to force him to fulfill any condition he might desire to impose. That is when there would be the possibility of coercion and tyranny.

3. You have cited the example of alcohol and stated that no one had taken this prohibitory injunction to mean that it is specific only to those kinds of alcohol that were prevalent in Arabia. Instead they understood it to mean that this law is applicable to that common factor which is inherent in all kinds of alcohol: that is - the property of intoxication. And this actually is the object of prohibition. What I would like to say is that in the same way we need to find out that common harmful factor of *Riba*. And this actually is the object of prohibition and all those kinds of interest that are free from this harm should not be brought under the definition of *Riba*.
4. You have used the ayah “وَإِن تُبْتَمْ فَلَكُمْ رُؤْمٌ أَمْوَالُكُمْ” But if you repent, you may have your principal amount” (Al Baqarah 2:279) in your argument that taking anything more than the principal amount is itself *Riba* because if the purpose was to prohibit the excess amount in some special kinds of loan then this would have been expressed as an indication itself, for example not to charge interest over the loan given to a needy. The entire injunction is as follows when read in conjunction with the previous ayah.

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا يَقِنُّونَ مِنَ الرِّبَا إِنَّ كُلَّمُؤْمِنٍ لَّمْ يَرِدْ عَلَيْهِ مِنْ أَمْوَالِهِ إِلَّا مَا سَعَى إِنَّ اللَّهَ وَرَسُولَهُ لَا يُحِبُّونَ الرِّبَا وَإِن تُبْتَمْ فَلَكُمْ رُؤْمُ شَيْءٍ مِّنْ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ ﴿٢٧٩﴾

“O you who believe! Be afraid of Allah and give up what remains (due to you) from Riba (interest) (from now

would provide more time, but this time charging interest. In such a scenario it is not at all necessary that the retailer having not able to pay in time would become poor and hence charging interest over him would signify a special kind of tyranny as had been understood by Mr. Shah.

onward), if you are (really) believers. And if you do not do it, then take a notice of war from Allah and His Messenger (pbuh) but if you repent, you shall have your capital sums. Deal not unjustly (by asking more than your capital sums), and you shall not be dealt with unjustly (by receiving less than your capital sums). (Al Baqarah 2:278-9)

These injunctions were to give up that excess (Riba) which was about to be received by the then lenders. That is why it is definitely related to those kinds of loans that were prevalent at that time and the injunction of the principal amount too is related to those very kinds of loans.

5. You have rightly said that neither do I have any historical proof that a person in that period did not conduct business by taking loan, nor is there any proof that businessmen did not take loans from any other businessmen or money-lenders. But from the context which I have already mentioned in my previous letters, it appears predominantly that in the then Arabs, such types of loans were not prevalent. My theory is that in the light of the severity of the punishment declared for the one who charges *Riba*, any kind of excess shouldn't be included under '*Riba*' unless it is made certain that in the period of the Prophet (pbuh) too it was considered *Riba*. As against this it appears that according to your theory that just on the basis of conjecture it should be included under the definition of *Riba*. And until entire proof is not found, such kind of excess which was prevalent in those days should not be considered outside the limits of '*Riba*'. Your theory is based on caution and extreme piety but I fear that this caution might become a cause for not only worldly loss but also loss in the Hereafter. In today's world, one cannot live without commercial loan; whichever nation abstains from it would remain economically weak and inferior against other nations. And such weakness which could have an impact on nation's freedom is not hidden from you. Most certainly

Allah would never like that Muslims had to become subdued. You have written in Tafheem-ul-Quran explaining the *ayah 87 of Surah Al Maida*

لَا تُحِرِّمُوا أَطْبَابَ مَا أَحَلَ اللَّهُ لَكُمْ وَلَا تَعْصُمُوا

Forbid not the good things which Allah hath made lawful for you, and transgress not.

This ayah embodies two directives. The first is that man should not attribute to himself the authority to proclaim things either lawful or unlawful according to his own wishes. Only that which God has held to be lawful is lawful, and only that which God has declared unlawful is unlawful'. Furthermore you have stated in the foot note 104 that the Prophet (pbuh) has prevented the Muslims from being severe to their own selves. Hence would it not be right that until further proof is found that commercial interest is also included in the definition of 'Riba' it should not be declared as unlawful merely on the basis of conjecture?

6. The interest which I got from the provident fund, a friend of mine took it as a loan few days back and I did not get it back from him even to this date. But if I am to get it back, then Insha-Allah (God willing) according to your suggestion I will not spend it on myself.
7. I also want to ask you about something not related to our subject. Allah says regarding intoxications and gambling. وَإِنَّهُمْ مَا أَكْثَرُ مِنْ نَغْيَرْهَا You have translated it as "their loss is much more than their benefit". The dictionaries which I have gone through, in them, I haven't found the translation of the Arabic word نَغْيَرْ as "loss". I summon you to provide an authentic reference in support of your translation and thereby a chance for me to be grateful to you.

Answer (Syed Abul Ala Maududi):

I received your letter dated 31st July in time, but I was so busy till date that I could not reply to you in time. I apologize for this delay. Before I say something to the points towards which you have drawn my attention, I wish that you again try to understand this issue afresh. The real problem is *Al Riba* which is prohibited by the Quran. We need to understand its reality or in other words find out the real cause of its prohibition? Quran has prohibited *Al Riba* either on the grounds that a person receives more than the principal amount he lends out or because he takes undue advantage of the dire situation of other person. I feel the former is the real cause of its prohibition. Here are some reasons in brief to support that contention:

1. The Quran prohibits interest and for that it uses the absolute term *Al Riba* whose meaning in the Arabic dictionary is simply “excess”. Taking “excess from the needy” is not included in the meaning of this word. By giving loans to non-needy or lending it for productive purposes and then receiving in excess, even then as per the dictionary the word *Al Riba* is applicable to this excess.
2. The Quran itself does not restrict this *Al Riba* to any specific meaning implying that it wants to prohibit the *Al Riba* which is earned by lending to the needy and wants to exclude prohibiting the *Al Riba* which is charged over the loans given to the non-needy or businessmen for productive purposes.
3. The Arabs used to consider the profit on loan and the profit on sale to be the same; so they used to say (إِعْنَاهُ الْبَيْعُ وَمُثْلُ الرِّبَا) i.e. “Buying and selling is nothing but a kind of interest” 2:275). The Quran made it clear by distinguishing between the two, that the profit on sale is lawful and the profit on loan is unlawful (أَخْلَقَ اللَّهُ الْبَيْعَ وَحَرَمَ الرِّبَا) i.e. “even though Allah has made buying and selling lawful, and interest unlawful” 2:275). By this it is evident that the door of doing business and

partnering in it is open, but the door of investment in the form of loans to earn profits is closed.

4. The Quran by saying فَلَكُمْ رُءُوسٌ أَمْوَالُكُمْ (i.e. “you have the right of the return of your capital” 2:279) made it clear that he who lends is entitled only to receive that amount which he has lent. He is not entitled to receive anything more than that. Here too there is no indication to the fact that the lender has a right to take more than the principal amount given to the borrower as loan for productive purposes.
5. After the dictionary and the Quran, the third important source is the Sunnah (traditions of the Prophet (pbuh)) from which the objectives of the injunctions of Allah could be learnt. Here too we see that mere excess is declared as the cause of the injunction and not that excess which is charged from the needy.

In the Hadith it is clarified that كُلُّ قرْضٍ جُزٌ مُنْقَعِدٌ فَهُوَ وَجْهٌ مِنْ وُجُوهٍ (Baihaqi) كل قرض جزءٌ نفعاً فهُوَ دِينٌ (Musnad Haris bin Usama) that every loan from which profit is gained is *Al Riba*²⁶.

6. The Prophet (pbuh) did not stop at the prohibition of the *Riba* which is charged on loan, but also prohibited the (excess amount transferred in) hand-to-hand transactions. He(pbuhs) prohibited quantitative disparity between the same kind of goods. Evidently there is no question of acute necessity here and it is clearly evident that the purpose of Allah’s injunction as understood by the Prophet (pbuh) inevitably was that Allah wants to prohibit all kinds of the excess (amount over the principal amount lent out). And to

²⁶ Some people who object to this Hadith say that it is daif (weak) in terms of authenticity. But the rule that has been described in the Hadith has been accepted unanimously by all the jurists of Islam. This universally acceptance lends credence to the subject matter of the Hadith even if it is weak in terms of authenticity.

put an end to the inclination towards this the Prophet (pbuh) forbade charging excess even in the hand-to-hand transactions besides loan.

7. All the jurists of the Ummah hold the same view about the purpose of the injunction (of prohibition of interest) that in the matter of loan, whatever is taken in excess to the principal amount is unlawful irrespective of its being a personal loan or a commercial loan هو في الشرع الزيادة على اصل العقد تباع (i.e. "in the terminology of Shariah, Riba signifies taking more than the principal amount without any business transaction between the two parties") (Al Nihaya, Ibn Aseer). According to this definition, all the jurists declare that profit to be unlawful which the lender receives from the borrower over a loan.

By ignoring these reasons, the basis on which you want to restrict the prohibition of interest to only personal loans and want to exempt commercial loans from this prohibition is simply that in your view only the first type of loan was in vogue in Arabia at the time of the revelation of the Quran and the second type of loan came much later in to the world. But your view cannot be accepted unless you give clear satisfactory answers to the following questions.

1. Did Allah and His Messenger (pbuh), distinguish the profitable and non-profitable loans and limit the prohibition of *Riba* to only the latter and exempt the first type both clearly and implicitly? If exempted, then there must be some reference, because the One who gives an order of prohibition alone has the right to make exemption and without His indication, we do not have any right to decide the lawful and the unlawful. In this connection you might probably argue that in that period the charging of interest on non-profitable loans was customary and hence Allah's injunction of prohibition of interest should only be considered to be related to that context / category. This

argument is not justified unless it also assumes that the knowledge of Allah and His Messenger (pbuh) is limited only to the affairs prevalent during the period of Quran's revelation and that Allah has no knowledge of the things to come. Furthermore the guidance of Islam is limited and applicable to only a specific time period and its teachings are not everlasting and eternal. If this assumption does not hold true in the core of your argument, then you have to admit that those types of transactions which were to be transacted after many years were also in the knowledge of Allah. When you accept this, you also have to accept that if Allah's aim was really to limit the injunction of prohibition only to non-profitable loans, then He would have definitely expressed His aim by any means. And His Messenger (pbuh) too would have revealed this aim to the extent that the injunction of the prohibition of *Riba* would not have prevailed over all types of loans.

2. The second question is that what proof do you have that in Arabia, only needy people used to take loans to meet their personal needs and nobody used to take loans for commercial purposes? Just that the practice of taking loans for productive enterprises came much later in to this world is not sufficient proof to decide that a person did not take commercial loans either for starting the business or in the course of business. You are evaluating the evidence to come at a very momentous decision (namely to decide the implication of the prohibition of *Al Riba* mentioned in the Quran). To exempt any commandment of Allah is not a small thing. You have to bring far weighty proof than what you are currently presenting. It is not our responsibility to produce the proof that in Arabia people used to take commercial loans. But rather the onus is on you to produce proof that they did not take loans for these purposes. Because it is you who is making claims of exemption. And you have not based this on any clear explanation or indication from Allah and His Messenger (pbuh) but rather

have based on the argument that at that time in Arabia, the application of *Al Riba* was made only to those loans which were taken for non-commercial purposes.

Now I will answer your points in brief:

In determining the meaning of *Al Riba* and the cause of its prohibition, we do not depend merely on the nature of those transactions which were prevalent in Arabia at that time, but our real sources are also the dictionary (to decipher the true meaning of the words of the Quran which were in vogue in that era), the Quran, the Hadith and the explanations of the jurists of the Ummah. Besides these, one supporting thing is to find the common denominator in those transactions to which the term *Riba* was applied. You said that the common denominator in it is not just charging an amount in excess to the principal amount but also that this excess amount was charged over the loans given to the needy so that they can meet their needs. But firstly the reason why it cannot be relied upon in determining the cause of the prohibition is that neither in the Quran is there any indication towards it nor in the Sunnah can we find any such thing on whose basis it could be assumed that charging excess amount from the needy is the cause of prohibition. Secondly we do not accept that at that time the loan transactions were limited only to such kind.

As far as the trade transactions of Arabia are concerned, neither did this clarification come to our knowledge that those were conducted by loan capital nor were we able to find that no element of loan was included in them at all, because neither I nor you can place the pivot of our debate on any record. This is a matter of common sense and any person who has a basic knowledge of business transactions cannot deny that even though the practice of using the loan capital as a base in business might have started much later, but the need to take loans from one another during the business and from the money-lenders too was presented to the businessmen much earlier. Earlier too, small businessmen used to take money on

loan from the big businessmen. Such a record regarding Arabia might not exist, but even then, such a kind of record regarding other countries of the world does exist dating thousands of years before the revelation of the Quran. On the basis of history it cannot be claimed that in the past, that business transactions were totally free from the element of loan²⁷.

In your view, the common damaging denominator could only be the determination of a cruel and unjust rate of interest for the loans provided to meet the requirements of the poor and needy. But in our view this is not the only damaging characteristic but this element too is a damaging characteristic that a person or an institution should be guaranteed a fixed profit just for contributing money and on the other hand for all those who work hard, try to earn profit by using their labour, skills and intelligence for them not only is there no fixed share in the profit but there is no guarantee of profit itself.

The suggestion that the Holy Quran makes is that in case of loan you are not entitled to get anything extra besides the amount given as loan and if you want to make profit than simply do business or become a partner in the business. By understanding this very aim of the Quran, in Islam *Mudaarabah* is declared lawful and interest-based loan is termed as unlawful.

The argument made by you by وَكُرْزَا عَلَيْهِ مِنَ الْبَيْوَا (i.e. "and give up all outstanding interest" 2:278) is not correct. This is not a temporary injunction for a specific period of time but like all other injunctions of the Quran, it is eternal. Whenever and wherever a person embraces faith, he becomes its addressee. If he requires taking interest on his given loan, then he should give up this demand and be content with only the return of his principal amount. Besides, your argument in using this ayah is based on the claim that the types of loan of that time were free from commercial interest; this claim itself is in need of proof.

²⁷ Please refer to Appendix II for more details.

How could it be made an argument? The types of loans which you are again and again referring to that they could only be of personal type, they themselves carry the possibility that a small businessman takes a loan from a big businessman and that big businessman might charge interest other than the original price. And, when the payment is not made on the appointed time, then he might give more time and increase the interest. In this way even the interest dues too come under the ambit of **وَكُفُّوا عَنِ الْرِبَا** [يُعَلِّمُونَ الْجِنَّةَ]. What proof do you have that these kinds of dues were included in those interest dues?

In my view, if the basis for including or not including commercial interest in the ‘injunction of *Riba*’ is sheer assumption (although it is not the case) even then making a “possibly unlawful thing” lawful is more dangerous than it being avoided by believing it to be unlawful. This command of the Hadith is very clear **دُعُوا الرِّبْوَ وَ الرِّبَيْةَ** (*i.e. forsake interest as well those things which contain the doubt of interest*). And in conclusion I am saying this only as a reply to this point of yours that the basis for declaring commercial loan to be unlawful is merely assumption. Otherwise I have no doubt that our assertion of declaring all kinds of loans as unlawful is backed by the fundamentals of the Quran and the Sunnah. I am happy that you have accepted my suggestion concerning your own provident fund. It is expected from you that at least you will save yourself from taking advantage of the doubtful money. I pray to God (that He blesses you with the insight for understanding the correct meaning of *Al Riba* and) prevent you from guiding others to its permissibility and whatever experience and insights you have gained in finance, those be utilized in forming an interest-free financial system.

The answer to your last question is that I have translated the Arabic word “**إِثْمٌ**” as ‘loss’ instead of translating it as ‘sin’. By the way, it is not incorrect to term it as loss from a linguistic point of view because the real meaning of “**إِثْمٌ**” is

“falling short of reaching the intended goal”. Accordingly the Arabs say ائمـت النـاقـة (i.e. the She-Camel is slow); she is deficient in the speed which is expected of her.

(*Tarjuman-ul-Quran, Muharram-Safar 1377 A.H. Oct-Nov, 1957*)

APPENDIX II

THE QUESTIONNAIRE OF IDARA SAQAFAT-E-ISLAMIYAH AND THEIR ANSWERS

[In the early 1960's, the Idara Saqafat-e-Islamiyah conducted a seminar on the topic of interest wherein some very important questions pertinent to the topic were raised. To this end the Idara prepared a questionnaire based on those issues. The questionnaire and the answers given by the author (Syed Abul A'la Maududi) are as follows]:

The Questionnaire

1. In what form were the loan transactions conducted in Arabia during the Prophet's (pbuh) time?
2. What is the meaning of the Arabic word *Riba*?
3. What is the difference between *Riba* and *Rab'h*?
4. In *Riba*, the conditions are imposed by the lender whereas in the bank-interest, the conditions are laid down by the borrower.
5. What is the difference between *Ba'i Salam* (advance purchase) and commercial interest?
A person gives his buffalo / cow to another person which gives 10 liters of milk a day and demands 5 liters from its daily output. If this is legitimate, then what is the difference when one loans his money for profit?
6. Why is the exchange of "similar" type of commodities with quantitative-disparity unlawful, when it is lawful for "dissimilar" kind of commodities?
7. Is mutual agreement between the two or more parties necessary in a business deal? According to some, the non-existence of an agreement between the parties itself creates

Riba. There is no question of loss. Is this the basis for prohibiting *Riba* so that one party is treated unjustly? No party is treated unjustly in commercial interest. If it's true that no injustice is done to any party, then how could bank-interest come under *Riba*?

8. A) Ordinary shares of industrial institutions.
- B) Its preferential shares.
- C) Fixed deposits of the banks.
- D) Opening a letter of credit from the banks; its various aspects. If taking loan on the basis of letter of credit is unlawful, then what would be the lawful way from which no disturbance is created in the system of life?
- E) House Building Finance Corporation & Industrial Finance Corporation.
- F) Government loans--- (i) national loans (ii) international loans

If all these loans are unlawful, then what would you suggest to run the government machinery?

ANSWERS

First question

The first question actually demands a critical analysis.

- (i) At the time of the revelation of Quran, were there loan transactions prevalent for industrial, trade, agricultural and national purposes?
- (iii) Was interest charged over these loans? Was it popular among the Arabs to take loans for these purposes?
- (iv) Was any excess charged over these kinds of loans? Was only the word *Riba* in use at that time or was there any other word?

Before saying anything on these assessments, we should first have a look at the economic history of pre-Islamic Arabia

and its relations with foreign countries to avoid being under the wrong impression that Arabia was a country isolated from the rest of the world and whose citizens were totally unaware of the world outside their valleys and deserts.

From the material available in the world today, regarding the ancient world, it has been proved beyond a shadow of doubt that all the business and trade between China, India and other eastern countries and similarly between Eastern Africa, Egypt, Syria (Levant), Asia Minor, Greece and Rome was conducted through Arabia. There were three big routes of this trade. First was the land route from Persia (modern day Iran) which passed from Iraq and Syria (which also included Lebanon, Jordan and Palestine). Second was the sea route of the Persian Gulf where all the goods were unloaded and docked at the eastern ports of Arabia and from there transported to Daumat-al-Jandal or Palmyra? Third route was the Indian Ocean through which all the trade commodities passed through Hadramaut and Yemen. All these routes were inhabited by the Arabs. And the Arabs themselves used to buy the goods on one hand and sell these on the other hand. They also used to do 'Freight Trade' transporting the goods with safety but charging a very heavy tax. By these three routes they always maintained strong relations with international trade. Since 2700 B.C. we have evidence of the existence of the trade relation between Yemen and Egypt. The Torah bears witness to the activities of the trade caravans of Banu Ishmael (Arabs) going on since 1700 B.C. We find the trade activities of Madyan, Dedan and Northern Hijaz in existence since 1500 B.C. which also continued for centuries. Since the times of Dawood (David) and Sulaiman (Solomon) i.e. 1000 B.C., we have the evidence that there used to be continuous trade between them and the Sabai tribes of Yemen and then the Himyari tribes in the early Christian centuries. During the period of Jesus Christ (pbuh), the Jews of Palestine mostly inhabited Yathrib, Khaybar, Wadi-ul-Qura (present day Al-Ulaa), Taym and Tabuk and maintained religious, cultural and

even economic relations with the Jews of Syria, Palestine and Egypt. It was these very Jews who used to bring grains from Syria and alcohol from Egypt to Arabia.

From the 5th century onwards the Quraysh tribe began to dominate Arabia's foreign trade. By the time of the Prophet (pbuh) they had immensely vast trade relations with Yemen and Abyssinia (present day Ethiopia) on the one hand, with Iraq on the second and with Syria and Egypt on the third. Whatever trade existed between Iran and Yemen in Eastern Arabia, a large portion of it passed from Hira to Yamama via Banu Tamim. It is totally against reason to assume that given the centuries old and vast trade relations, the Arabs were ignorant of the financial affairs and trade practices prevalent in the outside world.

Besides these trade relations, the Arabs had deep relations with the surrounding civilized world even from cultural and political point of view. In the 6th century B.C., the king of Babylon, Nabonidus, made Tayma, which is the northern part of Hijaz, his summer capital. How could it be possible that the people of Hijaz remained unaware of the economic laws and trade practices found in Babylon? Since third century B.C. till the era of Prophet (pbuh), the Nabatean kingdom of first Petra, then the Syrian kingdom of Palmyra, after that the Arabian kingdoms of Hira and Ghassan spreading from Iraq to the borders of Egypt, Hejaz, Najd, Algeria and Syria were all continuously in existence. These kingdoms had strong political, cultural and economic relations with Greece and Rome on one hand and Persia on the other. Then, because of ethnic relations, the Arab tribes of the interior also had close ties with them. The Ansar of Madinah and the Ghassani rulers of Syria belonged to the same stock and they continued to maintain relationships between each another. In the period of the Prophet (pbuh), his own poet Hassan bin Thabit used to be a regular visitor of the Ghassani nobles. The people of Quraysh had friendly relations with the nobles of Hira, to the extent that

they even learnt reading and writing from them and it is from the people of Hira that they got their script. Given such strong relations, how could it be believed that the Arabs were ignorant of the economic and financial affairs of Greece, Rome, Egypt, Syria, Iraq and Iran?

Furthermore, in every Arab quarter, the Sheikhs, the nobles and the big businessmen used to have a large number of Greek, Roman and Persian slave-boys and slave-girls. As a result of wars between Persia and Rome, there used to be many war-prisoners. Out of these POWs (prisoners of wars) the extras were sold to other nations and Arabia was one of its biggest markets. These slaves included a good number of educated, civilized merchants and artisans. The Sheikhs and merchants of Arabia used to take a lot of work from them. There were a large number of such slaves in Taif, Makkah, Yathrib and other centres. And they used to render their duties to their masters as artisans and labourers. Then how was it possible that the Arab merchants, under whose service there existed so many helpers, would remain unaware of the financial and trade practices prevalent in the surrounding world?

Along with this, another aspect of the economic history of the Arabs must be kept in sight. Never in its history was Arabia in any way self-sufficient in terms of food and never at any point of time had any kind of industry flourished in Arabia which could provide all the necessities of life. This country had always received its provisions from outside its territorial borders and every kind of commodity even clothes used to come from outside its boundaries. Around the period of Prophet (pbuh) this import business was mostly in the hands of two groups: The tribes of Quraysh and Thaqif and the Jews. But they would only do wholesale business with the imported goods. Retailing in the smaller colonies and tribal areas of interior Arabia was none of their business, neither could it have been possible nor would any of the Arabian tribes have agreed

to all the benefits being reaped by these tribes while their own people miss out on any share in this monopoly! Hence these wholesalers sold goods to the retailers of the interior and thus make millions. And a considerable portion of these goods were sold on credit. Perhaps, there never has existed in any part of the world a pure cash-based transaction between the wholesalers and the retailers. Credit is unavoidable in such transactions from which there had never been any escape. If it is claimed that it was only in Arabia that transactions were conducted on cash at that time and there wasn't any involvement of loan, then not only is it unacceptable rationally but also it is wrong historically.

Now I shall take up those assessments which I have mentioned in the beginning.

The fact that in the ancient times, loans were taken not only for personal necessities but also for business, industrial, agricultural and governmental purposes is historically proven and there is no basis to claim that in the ancient world the loan transactions were made only to meet the personal needs. Similarly, it is also a proven fact that charging an extra over the principal amount without any distinction between personal or commercial matters was customary for all kinds of loans. Encyclopedia Britannica (1946) says under the chapter "Banks" that the temples of Babylon and Egypt were not only centres of worship but also banks. The clay tablets extracted from the archeological sites of Babylon tell us that before the harvest, the landlords used to take loans from the temples to meet their agricultural requirements. And after the harvest, the loan was repaid with interest. This money lending system was found in 2000 B.C. Around 6th century B.C. even private banking was found in Babylon. Around 575 B.C. we find the existence of IGIBI bank in Babylon which used to provide loans to the landlords for agricultural purposes. Furthermore, these banks used to even give interest to those who deposited their wealth with them. It must be borne in mind that it was the

very same period when Taima, the city of northern Hejaz, was the summer capital of the Babylonian kingdom.

Will Durant, in his book 'A Story of Civilization', says regarding Babylon that: "As per the law of the land, the interest over the loans was 20% per annum in cash and 33% per annum in kind. Some of the most powerful families continued this money-lending business generation after generation and would provide loans to industrialists on interest. Besides, priests of the temples also used to provide loans to the landlords for the preparation of harvests."

The same author writes after some pages: "This epidemic of interest was the price paid by the Babylonian industry, just like ours, in order to get money through a very complex system of loans and borrowing. The Babylonian civilization was actually a commercial civilization. All the documents and manuscripts excavated from the archeological sites are mostly of commercial nature: purchase deeds, loans, contracts, partnerships, brokerage, exchange, holdings and other such kinds."²⁸

The condition of Assyria too was no different from Babylon. Will Durant writes about the conditions of the era of Sina Kareeb of 7th century B.C.: "To certain extent, the private money lenders used to provide capital for trade and industry and charge an annual 25% of interest."²⁹

Under "Banks", the encyclopedia Britannica states regarding Greece that around 4th century B.C., there was a formal system of banking in existence. In this system, there were those kinds of banks which used to keep the deposits of people and pay interest over it. Will Durant writes that around 5th century B.C., the Apollo temple of Delphi was the international bank of the entire Greek world. It provided loans with a proportional percentage of interest to both the

²⁸ Volume 1 page 29 of Will Durant's - 'A Story of Civilization'

²⁹ Volume 1 page 274 of Will Durant's - 'A Story of Civilization'

individuals and the governments. Similarly, the private bankers used to provide loans to businessmen at 12-30% of interest. The Greeks learnt this business from the Near East (Babylon, Egypt and Syria) and later on Rome learned it from the Greeks. At the end of the 5th century B.C. some of the largest private banks were already established in Greece. It is through these banks that the trade of Athens began to spread³⁰.

After this, comes the era of Rome. Will Durant writes: "In the 2nd century B.C. banking was at its zenith in Rome. The money lenders used to keep the deposits of the people and pay interest over it. They used to give and take loans, invest their and other's money in business³¹. In the 1st century B.C., there were banks established in every part of the Roman Empire. Besides other bank operations, they used to keep the deposits of people and pay interest over it and used to loan this money with interest. This business was mostly in the hands of the Greeks and the Syrians. In Gaul, the word Syrian was synonymous with money-lender. In that era, even the government treasury used to provide interest-based loans to the landlords with harvest being the security. During Augustus' period, the interest rate fell up to 4%. After his death, the rate went up to 6% and during Constantine's period, it increased up to 12%"³².

Baron writes in his book 'A Religious and Social History of the Jews' that in this very 1st century B.C. the Jewish bankers, Alexander and Dimistrios loaned 200,000 Dirham (around 30,000 dollars³³) to the king of Judea – Herod Agrippa.

³⁰ Volume 1 page 63, 262 of Will Durant's – 'A Story of Civilization'

³¹ Volume 3 page 88 of Will Durant's – 'A Story of Civilization'

³² Volume 3 page 36 -231 of Will Durant's – 'A Story of Civilization'

³³ Page 261 of Baron's book – "A Religious and Social History of the Jews"

In the period close to the advent of the Prophet (pbuh), Justinian (who died just five years before the birth of Prophet (pbuh)) imposed by way of law, 4% of interest rate on landlord's and farmer's loans, 6% on personal loans, 8% on commercial and industrial loans and 12% on sea trade loans throughout the Byzantine Empire³⁴. Even after Justinian, this law was in operation in the Byzantine Empire for quite a long time. It shouldn't be forgotten that the Byzantine Empire in which this law of interest was in operation, its boundaries extended to the northern Hejaz and all the areas of Syria, Palestine and Egypt were under its control. The Quraysh merchants were frequent visitors to these markets and the Prophet (pbuh) himself used to visit these markets with the trade caravans since the days of his childhood till he was bestowed with Prophethood. Then how could it be assumed that the Quraysh merchants and the Prophet (pbuh) himself were unaware about the practice of giving and taking loans for commercial, industrial and agricultural purposes and were also unaware about interest being legally charged on such loans³⁵.

Right during the very period of Prophet (pbuh), there was a great war going on between Rome and Persia which is mentioned in Surah 'Room' (i.e. The Romans) of the Holy Quran. When Heraclius began his offensive against Chosroes, at that time he had to take loan with interest from the

³⁴ Volume 4 page 120, 436 of Will Durant's – 'A Story of Civilization' and Volume 2 page 716 of Gibbons – 'The History of the Decline and Fall of the Roman Empire'

³⁵The greatness of the trade caravans of the Quraysh which used to go from Hejaz to Palestine and Syria can be estimated from the fact that during the War of Badr, there were 2500 camels belonging to Abu Sufyan's trade caravan returning from Syria to Makkah. Obviously could the number of people accompanying such a large caravan be any less than 2500? Now, could it be imagined, that the merchants of a city visiting a foreign country in such large numbers could remain ignorant of the prevailing business practices and financial affairs of that foreign land?

accumulated wealth of the Church to meet the war requirements³⁶.

Now, how could it be believed that in a war as great as this one, which turned the entire Northern Arabia from Iraq to Egypt upside down, where there was a buzz about Persia's remarkable victories, where, after saving the capital of the declining Roman empire, Caesar had launched a stunning offensive against Chosroes which ended at the destruction of Madain, the capital city of the Sassanid empire, the Arabs could remain completely unaware of the fact that Caesar took an interest-based loan from the churches for his attack? That the churches provided interest-based loan to wage war in order to protect Christianity from Zoroastrianism and not only Jerusalem but also to liberate the Holy Cross from the polytheists? How could this strange and bizarre incident remain unnoticed from the Arabs whose eyes were set on the results of the war? And especially, how could the Quraysh remain unaware for since the revelation of Surah Al-Room there already was a bet between the leaders of Quraysh and Abu Bakr concerning the outcome of the war between Persia and Rome?

It is clear from what I have said up until now, that the Arabs have maintained extremely close relations with cultural, economic and political life of Middle East since ancient times. And in this piece of land, there has been the practice of giving and taking loans with interest for commercial, industrial, agricultural and governmental purposes since 2500 years. And it is highly improbable to imagine the people of Arabia to be unaware and unaffected from this practice.

Now take a look at the financial affairs of Arabia which were in existence during the time of Prophet (pbuh). I have already said that to meet the needs of Arabia, food grains and

³⁶ Cambridge Economic History of Europe, vol.2 page-90, Gibbon's 'The History of the Decline and Fall of Roman Empire', vol-2, page-791

water were mostly imported by Jews and the rest of the commodities were brought by the merchants of Makkah and Taif from foreign lands. I have also said that this entire business of Quraysh, Thaqeef and the Jews was limited to wholesaling. In the interior of the peninsula, the retailing was in the hands of others and they used to purchase the goods from these wholesalers. I have also said that nowhere in the world has the business between the wholesalers and the retailers ever existed solely on cash. And Arabia was no exception to it.

After this, have a look at the following opinions of the commentators very close to the period of the Prophet (pbuh) as mentioned in the commentaries concerning the ayah of *Al Riba*.

Al Dahhak says regarding وَذَرُوا مَا تَبَقَّىٰ وَمِنِ الْإِيمَانِ إِنْ كُنْتُمْ مُّؤْمِنِينَ @ (i.e. "and give up all outstanding interest." 2:278):

كَانَ رِبَّا يَتَبَرَّأُ إِلَيْهِ فِي الْجَاهِلِيَّةِ

"It was the interest with which the people used to buy and sell in the days of (Ignorance) Jaahiliyyah (Ibn Jareer, vol. 3, pg. 71).

إِنَّ رِبَّا أَفْلَى الْجَاهِلِيَّةَ يَبْنِي الرَّجُلُ الْبَيْنَ إِلَى أَجْلٍ مُسْتَحْيٍ فَإِذَا حَلَّ الْأَجْلُ
وَلَمْ يَكُنْ عِنْدَ صَاحِبِهِ قَضَاءٌ زَادَهُ وَأَخْرَجَ عَنْهُ.

Qatadah says: "Interest as practiced by people of Jaahiliyyah (Ignorance) in that a person used to sell to another person (on credit) granting specified time period for its payment. And when the period expired and the buyer failed to pay the price, then the seller used to grant more time and increase the price"³⁷. (Ibn Jareer pg. 67)

³⁷ It is clear from the above, that no interest was charged over the initial time period granted for the payment of the price. However, when no payment is made at the end of the given time-period, then an extra period of time is granted with interest. Such type of considerations in an interest based society was generally given by bigger business men to smaller ones

نزلت هذه الآية في العتبان بن عبد المطلب ورجل من بنى المغيرة كانوا شريكين في الجاهلية سلطا في الriba الى انما مِنْ ثَقِيفٍ مِنْ بَنِي عَمْرُو فَجَاءَ إِسْلَامٌ وَلَهُمَا أَموالٌ عَظِيمَةٌ فِي الرِّبَا

Suddi says: "This ayah was revealed regarding 'Abbas bin 'Abdul Mutalib and a man from the tribe of Banu al Mughira. Both of them were partners in the days of Jaahiliyyah and had loaned money with interest to the people of Banu Amr of Thaqeef tribe. When Islam came, a large portion of their wealth was invested in interest".

(Ibn Jareer page 71)

All these reports tell us that in pre-Islamic Arabia selling goods to the retailers on credit by charging interest which is nothing but commercial interest - the word used was only *Al Riba*. Neither was there any other word in usage for the commercial loans, nor *Al Riba* referred to the interest charged over personal loans.

It is related in Al Bukhari³⁸ in seven places and one place in Al Nasai³⁹ with authentic chain of transmitters that the Prophet (pbuh) said, "A man from the Bani Israel asked another from the Bani Israel to lend him one thousand Dinars⁴⁰. The second man required witnesses. The former

so as to make them their constant customers. Such considerations are not given poor customers anywhere.

³⁸ Bukhari, Kitab Al Zakat (Baab Ma Yastakhriju min Al Bahr), Kitab Al Shuroot, Kitab Al Istiqraadh, Kitab Al Kifalah, Kitab Al Laqt, Kitab Al Istizaan and Kitab Al Buy'u (Baab Al Tijarah Fi Al Bahr).

³⁹ Al Nasai, Kitab Al Laqt.

⁴⁰ It can be objected that in the Hadith the words "for business purpose" is not present. But this objection is invalid for numerous reasons. First of all in the Hadith the words "aslafa yuslifu" have been used, which means advance payment and is mostly used in the context of business transactions. Then he took a loan of 1000 dinars approximately 10,000 rupees. Obviously such a huge amount will not be asked to remove poverty or for buying a shroud. And on top of that after taking that amount, he embarked on a sea journey

...Cont. on next page

replied, 'Allah is sufficient as a witness.' The second said, 'I want a surety.' The former replied, 'Allah is sufficient as a surety.' The second said, 'You are right,' and lent him the money for a certain period. The debtor went across the sea. When he finished his job, he searched for a conveyance so that he might reach in time for the repayment of the debt, but he could not find any. So, he took a piece of wood and made a hole in it, inserted in it one thousand Dinars and a letter to the lender and then closed (i.e. sealed) the hole tightly. He took the piece of wood to the sea and said. 'O Allah! You know well that I took a loan of one thousand Dinars from so-and-so. He demanded a surety from me but I told him that Allah's Guarantee was sufficient and he accepted Your guarantee. He then asked for a witness and I told him that Allah was sufficient as a Witness, and he accepted You as a Witness. No doubt, I tried hard to find a conveyance so that I could pay his money but could not find, so I hand over this money to You.' Saying that, he threw the piece of wood into the sea till it went out far into it, and then he went away. Meanwhile he started searching for a conveyance in order to reach the creditor's country. One day the lender came out of his house to see whether a ship had arrived bringing his money, and all of a sudden he saw the piece of wood in which his money had been deposited. He took it home to use for fire. When he saw it, he found his money and the letter inside it. Shortly after that, the debtor came bringing one thousand Dinars to him and said, 'By Allah, I had been trying hard to get a boat so that I could bring you your money, but failed to get one before the one I have come by.' The lender asked, 'Have you sent something to me?' The debtor replied, 'I have told you I could not get a boat other than the one I have come by.' The lender said, 'Allah has delivered on your behalf the money you sent in the piece of

and earned so much that the 1000 dinars he stuffed into a wooden log and sent his lender and took another 1000 dinars and reached his lender personally. Is it not obvious from this that he had taken the money for business and not for fun?

wood. So, you may keep your one thousand Dinars and depart guided on the right path."

The above mentioned Hadith is an absolute proof that the concept of commercial loans was not an unknown thing in the Arabs. It is reported in IbnMajah⁴¹ and al Nasai⁴² that at the time of War of Hunayn the Prophet (pbuh) took thirty or forty thousand dirhams as loan from Abdullah bin Rabi'ah Makhzoomi and then he repaid it when he returned from the war.

One of our friends has drawn my attention to two more incidents for which I am grateful to him. The first is the incident of Hind bin Utbah who took four thousand dirham of the Bait-ul-Maal from Umar for business⁴³. Second incident is also from the period of Umar. Abu Musa Al Ash'ari (Governor of Basra) loaned some of the money from Bait-ul-Maal to Umar's two sons, Abdullah and Ubaidullah for business. But afterwards, Umar objected to it and demanded not only the principal amount, but also the entire profits from his sons. But at the suggestion of the people instead of debt, he declared it to be "*Mudaarabah*" and demanded to pay half of the profits⁴⁴.

Both of these examples are very close to the period of *Jaaahiliyyah*. In Arabia, interest based business transactions were in vogue till 9 A.H. These incidents occurred merely 10 or 12 years after its final prohibition. Obviously, in such a short period of time, concepts do not change. That is why the outcome which could be derived from these incidents is that

⁴¹ Abwab Al Tijaarah: Baab Husn Al Qada

⁴² Kitab al buyuu Baab al istiqraadh.

⁴³ TarikhTabari, Shaium Min SeerahMimma Lam YamdhiZikruhu.

⁴⁴ Mu'atta Kitab Al Qiraadh Wa Baab Seerah Umar.

the concept of commercial loans was present in the period of *Jaahiliyyah*⁴⁵.

As to the question of why the historians, Hadith composers and Quran commentators did not make a clear and separate mention of the personal and commercial loans, then it's obvious reason is that in their sight, a loan was a loan no matter for what it was taken for and interest was charged on it irrespective of the purpose. Neither did they feel the need to explain whether the loan was to meet the needs of a starving and dying stomach, nor did they find it necessary to make a special explanation of whether it was taken for any commercial purpose, the details of such matters are scarcely found and in order to understand the real situation from these matters, it is indispensable to view the conditions of Arabia in the overall framework of the then world. The concept of making a distinction between various types of loans according to their objectives and legitimizing the charging of interest over one type of loan and illegitimizing the other type was probably never found in the pre 14th century C.E world⁴⁶

At that time all the adherents of Judaism, Christianity and Islam and in the same way all the leaders of ethics and morality

⁴⁵One can say regarding this, that no, there are so many concepts available which came into existence after the advent of Islam and were not present in the days of *Jaahiliyyah*. Like these, this novel idea is also a product of the Islamic era. But if someone says like this, then we say to him, okay, even if it is a product of Islamic era, at least it is now proved that doing business on commercial loans started during the period of Umar and after this, as we have already stated, that during Imam Abu Hanifah's period, the situation reached to such an extent that in Abu Hanifah's trade itself, around fifty million rupees was invested as loan. The question is why couldn't the Sahaba, the *Tabi'un* (the people belonging to the next generation subsequent to the period of Sahaba) and those who came after them, and the great *Mujtahid* Imams understand that the aim of the holy Quran is only to forbid interest on personal loans and not commercial loans?

⁴⁶Henry Pirenne, Economic and Social History of medieval Europe IV edition, Butler, London 1949 p.140

were unanimous that charging interest is illegitimate on all types of loans. It is said that in the pre-Islamic period, it was not possible for the people to invest the capital in business by taking loan because there was no formal government in the country, there was lawlessness everywhere, the trade caravans had to pay heavy taxes so as to pass through the tribal areas and due to these dangerous conditions, the interest rate used to reach up to 300% to 400% and doing business by taking loans at such high rates was not at all profitable. But this conjecture is not at all in conformity with the real historical conditions. It is just an assumption with no relevance to history and is believed and stated only on the assumption that since there was no formal government in Arabia and since there prevailed general lawlessness across the peninsula, then definitely these might be the consequences. Whereas, historical records tell us that in the period close to Islam, due to the continuous war and political tension between Persia and Rome the only mediators of the trade relations between China, Indonesia, India, East Africa, and the Roman world were the Arab merchants of Makkah. Especially after the Persian occupation of Yemen, all the routes with the east got closed. In such conditions, all the trade merchandize of the east used to get docked at the ports of Persian Gulf and Arabian Sea and after being transported to Makkah from there used to reach the Roman world. And in a similar fashion, all the merchandize of the Roman world were brought to Makkah by these very trade caravans of Quraysh and then transported to those ports where the merchants of the east used to come. De Lacy O'Leary writes that, at that time, Mecca had become a banking centre where payments could be made to many distant lands and a clearing house of international commerce⁴⁷

How could this trade grow and flourish if the conditions were as those assumed? Even a superficial familiarity with the economic laws are sufficient to understand that where the

⁴⁷Arabia before Muhammad pg.182

commercial interest reached 300% to 400% due to such large trade expenses and risky market, then the cost price of the merchandize must have reached such high levels that it would have been impossible to sell it in the foreign markets with the expectation of profits. But how could the merchandize be sold in the markets of Egypt and Syria at such prices? Actually, despite the prevalence of lawlessness and anarchy which is so frequently mentioned, large-scale trade was carried out by those tribes which were themselves powerful, had made contracts with other bigger tribes, had loaned huge amounts of money to other tribes, had hundreds of people in the service of their trade, and even after supplying all the luxury items to the leaders of the tribes, maintained vast influence over them. Besides, the very interests of the tribes demanded that they continue to receive the necessities of life viz. food, clothing, etc. which were imported from foreign lands. That's the reason such large trade caravans of these tribes which at times used to include 2500 camels had to pay such heavy taxes in order to pass through the Arabian tracks and had to bear such huge expenses in order to protect the caravans from dangers that the price of the merchandize used to reach such levels as to make it impossible to sell. Other than the foreign trade, in various parts of Arabia would be in the form of annual trade fairs in 20 different key locations which are mentioned in the books of history. In these fairs, trade caravans from all the corners of Arabia used to come and buy and sell the merchandize. Some of these fairs used to attract even the merchants of Rome, Persia, China and India. How could this continuous movement and transportation of trade caravans had been possible, if the conditions prevailing in Arabia were as bad as are usually assumed? Historians have made clear regarding the trade of Quraysh that they used to make 100% profit. It is absolutely illogical to believe that they could have made such profits without getting capital from an interest-based loan while the rates have reached up to 300-400% per year. And there exists

no historical evidence whatsoever to support the claim that the rates of interests had reached to such high levels in Arabia.

Second Question

In the Arabic language the word *Riba* denotes “excess”, “increase” and “growth”. But technically, the meaning signified by the word al-*Riba* is made clear from the following words of the Quran:

وَذُرُوا مَا تَبَغَّىٰ مِنَ الرِّبَا... وَإِنْ تُبْلِمُ قَلْكِلَهُ رُعْوَشَ أَمْوَالِكُمْ... وَإِنْ كَانَ ذُو
عُسْرَةٍ فَنَظِّرْهُ إِلَىٰ مَيْسَرَهُ

and give up what remains (due to you) from Riba (interest) (from now onward)....but if you repent, you shall have your capital sums....,And if the debtor is in a hard time (has no money), then grant him time till it is easy for him to repay.

(Surah Al Baqarah: 278-80)

These words are indicative of the fact that this injunction of *Riba* is related to a loan transaction and whatever excess is demanded over a debt is called *Riba* which is commanded to be forsaken. Besides, the Quran also makes the meaning of *Riba* clear by stating “وَأَحَلَ اللَّهُ الْبَيْعَ وَحَرَمَ الرِّبَا” (Allah made trade lawful and made interest unlawful). It is obvious from these words that whatever excess accrued from the capital of a loan is different from the profit made the investments in a business. In other words, *Riba* is that excess money which is of course made but not through business or trade. On this basis, the scholars of Hadith, *Fiqh* and *Tafseer* are in complete agreement that in the Quran, the *Riba* that is forbidden is the one which is demanded as an extra on the principal amount in a loan transaction. As it is already proved from the answer to the first question , that at the time of the revelation of Quran , it was a very well-known fact in Arabia that loans were taken not only for personal needs but also for trade and national purposes. But nevertheless, the holy Quran, while forbidding interest, has not pointed out to anything that could lead us to

believe that there exists a difference between loans in terms of objectives and in terms of purpose, and also that the injunction forbidding interest is only limited to the personal loans and that charging interest over commercial loans is permitted. And since 1st century Hijri until now all the jurists of Islam are unanimous over the principle that “every loan from which profit is made is *Riba*”. Before the contemporary era, not a single example could be given from the history of *Fiqh* that differed from this unanimous decision of jurists.

Third question:

The difference between *Riba* and “Rabh” is that *Riba* is the name of the extra money collected from the debtor besides the loan. In contrast to this, *Rabh* refers to the money made more than the cost price invested in a commodity. As against this, the word “Khasaara” (loss) is used when someone’s merchandise is sold at lesser than the cost price invested. The meaning of “Rabh” according to *Lisan-ul-Arab* is:—

الرَّبْحُ وَالرَّبْحُ وَالرِّبَاخُ الْيَقَاءُ فِي التَّجَرِّبِ ---
--- وَالْعَزْبُ تَقُولُ رَبْخَتْ تِجَارَتُهُ إِذْ أَرَى رَبْخَتْ صَاحِبَهُمَا
فِيهَا --- وَقَوْلُهُ تَعَالَى فَمَارِبَخَتْ تِجَارَتُهُمْ -

“Growth of business/progress in business is called “al-Rabhu” and “al-Rabha” and “al-Rabaah”. The Arabs say “rabihattijaaratuhu” when the businessman earns profit, and Allah, the most High, says “And their business did not grow”. (*Lisan ul Arab Printed in Beirut Volume 7 page 442*)

In “*Mufradaat*” Imam Raghib says:

الرَّبْحُ الزِّيادةُ الْخَاصِلَةُ فِي الْمُتَابِعَةِ -

“*Rabh*” is that increase which is made in a buying and selling transaction.

The Holy Quran also makes a distinction between *Riba* and the commercial profits. The objection put forward by the

unbelievers of Arabia against the prohibition of interest was this: ائم الْبَيْعِ مُثْلُ الرِّبَا (trade is like interest)

that is, the selling price which is made more than the cost price invested in a business is exactly same as demanding an extra amount of money over the principal amount in a loan transaction.

The Quran, as a response to this objection, stated categorically that

أَخْلَقَ اللَّهُ الْبَيْعَ وَحَرَمَ الرِّبَا

(Allah has made business lawful and interest unlawful)

That is, increase in wealth through business is one thing and through loan is another. One is made lawful by Allah and other unlawful. If anyone wants to make profit, then the only door open for him is the door of business transaction or to participate in it with others but the income leading to profit by charging interest over the loan is closed.

Fourth question

The definition of *Riba* is “an extra amount charged over the principal amount stipulated in a loan transaction”. In this definition, there is absolutely no question of whether this interest was demanded by the lender or offered by the borrower. This question does not hold any validity in the legal definition of *Riba* and neither in the Quran nor in any authentic Hadith do we find any reference to anything which says that a difference would occur in the nature of *Riba* if it is offered by the borrower voluntarily without coercion. Furthermore, there never was and there is not a single person in the world that would be willing to put forth a condition of voluntarily offering to pay interest when he could get an interest-free loan. Such a condition could only be presented by a borrower who has lost every hope of getting an interest free loan. That is the reason it definitely does not apply in the definition of interest.

Moreover, in ancient times and even today, bankers offer interest over the deposited money so that people, out of their greed to make money would hand over their hoarded wealth to the banks on lower interest rates and then these bankers could make profits by lending these deposits with higher interest rates. If such an offer comes from those who pay interest (on deposits namely the bankers) then what justification can it add to the argument of exempting this kind of interest from the definition the prohibited interest? The nature of interest which is paid over the deposits (by banks) is that it is actually a share of the same interest which is earned by lending those very deposits in the form of personal, commercial and national loans. This would analogically be like a person who steals money by using tools of burglary and then giving a cut (share) to the one who provided the tools. This cut cannot be justified (to be legal and acceptable) by arguing that the giver gave the cut happily and the receiver accepted it voluntarily.

Fifth question

“*Ba’i Salam*” is actually a form of advance purchase i.e., an advance payment is made by the buyer to the seller for the deferred supply of goods at a specified date pre-determined in the contract. For instance, I purchase a hundred bundles of cloth today and pay the price, with the condition that I would take these bundles after a period of 4 months. Four things are necessary in this contract/sale.

1. First of all, it is necessary for the validity of *Ba’i Salam* that the buyer pays the price in full to the seller at the time of effecting the sale.
2. The quality of the commodity should be clearly determined so that no ambiguity might exist between the seller and the buyer regarding the quality which might become a cause of dispute.

3. The quantity of the commodity too should be correctly determined either in terms of weight or measurement or numbers.
4. The exact time of delivery to the buyer should be specified which also should be free of ambiguity lest it lead to disputes.

The nature of the advance payment which is made in this sale is not at all like a loan, but rather it is exactly like the payment made by the buyer in a hand-to-hand transaction. Even in *Fiqh*, it is named شمن 'samān' (i.e. price) and not loan. In case of any failure in the delivery of the commodity at its specified time or the annulment of the sale due to any cause, the buyer would be reimbursed only the actual price and he is never to be considered deserving of anything more. The only difference between *Ba'i Salam* and a regular sale is that in a regular sale, the buyer takes the purchased commodity hand-to-hand from the seller and in *Ba'i Salam*- sale; he specifies a date to possess it. I have never understood the logic of confusing it with loan and interest. The buffalo mentioned in the question above is not with reference to *Ba'i Salam* but to a form of partnership i.e., the buffalo belongs to one person, another person utilizes it and the milk is distributed between the two.

Sixth Question

As had been explained by Ibn al Qayyim and others, the purpose for prohibiting quantitative disparity in the exchange of commodities of same kind is actually prevention of means i.e. the real forbidden thing is *Riba al-Nasiah* (interest on loan), but in order to exterminate the mentality of extorting more money, quantitative disparity in the exchange of commodities of same kind is also prohibited. Obviously the exchange of commodities of same kind, for example rice for rice is done only in a case when one type of rice is better in quality than the

other. The motive of the law is to prevent the exchange of let's say 2 pounds of good quality rice with 2 $\frac{1}{4}$ of inferior quality rice even if the difference in their market prices is proportional. But rather, the law intends that people should buy and sell commodity for currency. In a barter exchange of rice for rice with quantitative disparity, the same mentality receives a fillip which is the root cause of interest mongering. And this is exactly what the law intends to bring to an end.

In this connection, it is worth mentioning that whatever differences the jurists had, it was only regarding *Riba al-Fadl* (interest in excess) because the Prophet (pbuh) had given the injunctions forbidding interest in his last days. And the various ways of the application of these commandments could not be clarified during the life of the Prophet (pbuh). But as far as *Riba al Nasiah* (interest charged over loans) is concerned, the jurists unanimously agree over its prohibition and the related injunctions. This is a clear issue wherein there is no confusion.

Seventh Question:

Consent of the concerned parties is essential in business, but this is neither the sole reason for the business to be legitimate nor can its absence become a cause of its illegitimacy. Nowhere does the Quran say that the reason why interest is prohibited is that a person pays interest out of helplessness or out of undesirability, although nowhere in the world is any type of interest paid out of consent or out of a strong desire to offer interest. And if there is a possibility of getting interest free loan, there wouldn't be anyone who would agree to pay interest over the loan, but the question of consent and dissent with regards to its prohibition is entirely unrelated because the Holy Quran absolutely prohibits the loan which involves the condition of paying anything more than the principal amount, irrespective of the fact, whether this

condition was decided by the consent of the concerned parties or by any other way.

As to debate that the real reason for the prohibition of interest-based loan is “Zulm” (injustice and tyranny) and those loans should be made lawful which do not involve “Zulm” (injustice and tyranny), I would like to say that in this matter the Holy Quran has left no room whatsoever for anyone who could derive merely “Zulm” (injustice and tyranny) from its words and label it to be the cause of the prohibition of interest and then specify the meaning of the word Zulm in whichever way one likes. The place where the Quran speaks about this cause of prohibition, at that very place, it also makes clear the meaning of the word Zulm. Its words are as follows:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذْ قُوْلُوا إِنَّكُمْ مُّؤْمِنُونَ ۝
فَإِنْ لَّمْ تَفْعَلُوا فَأَذْنُوا بِحَزْبٍ مِّنَ اللَّهِ وَرَسُولِهِ ۚ وَإِنْ تُنْهِمُ فَلَكُمْ رُءُوسُ
آمُوَالِكُمْ ۖ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ ۝

O you who believe! Be afraid of Allah and give up what remains (due to you) from Riba (interest) (from now onward), if you are (really) believers.

And if you do not do it, then take a notice of war from Allah and His Messenger (pbuh) but if you repent, you shall have your capital sums. Deal not unjustly (by asking more than your capital sums), and you shall not be dealt with unjustly (by receiving less than your capital sums).

(Surah Al Baqarah : 278 – 279)

Here, two types of Zulm are mentioned. One is that which is committed by the lender against the borrower, and the other is committed by the borrower against the lender. As it is obvious from the context of the above mentioned ayah, the Zulm committed by the borrower is that even the principal amount is not paid to the lender. In an exactly similar manner, the Zulm of the lender as it is obvious from the context of the ayah is charging excess besides the principal amount. In this way, the Holy Quran itself determines the meanings of Zulm

committed by the lender and the borrower in a loan transaction against one another. In accordance with this very meaning, justice denotes that the lender asks only the payment of principal amount and Zulm refers to the charging of more besides the principal amount. This context of the Quran is so clear in its meaning, that all the commentators from Ibn Abbas and Ibn Zayd to Shaukani and Aaloosi of the last century have taken its meaning to the same as explained above. In this entire stretch of time, no commentator of the Quran is found who might have taken only the word Zulm to be the cause of the prohibition of *Riba* and then tried to take the meaning of Zulm from somewhere else. It is absolutely wrong as a matter of principle that we neglect the meaning of a word occurring in a sentence which appears so obvious from the context and then try to clothe it with some other meaning willy-nilly.

We do not accept the claim which is made in this connection that no Zulm is committed against any party in commercial interest. Is it any lesser Zulm that a person gets the guarantee of a specific profit for oneself by merely providing capital as loan, but no guarantee is for those who invest time, labour and intelligence in developing a business and on the contrary are responsible to pay interest along with the principal amount to the lender even if they suffer loss?

Entire risk falls on the shoulders of the entrepreneurs investing labour but the entire profit falls into the basket of those investing capital; how on earth could this be considered justice??!! Therefore interest in any case is Zulm, whether it is charged over personal or commercial loans. Justice demands that when you give loan, you are entitled to get back only your principal amount and if you went to invest it in business, then you have to do this as partner.

Eighth Question

I have already answered this question in detail in the chapter "Practical Method For Reformation". Here, I shall answer in brief.

- (a) The ordinary shares of the industrial institutions are totally legitimate provided the business conducted by these institutions is not unlawful in itself.
- (b) Preferential shares, which carry the assurance of a fixed profit, fall under the definition of interest and are hence illegitimate.
- (c) Two courses of action could be adopted with regards to fixed deposits: those who are only concerned with storing their funds in a safe place and do not wish to invest their funds in any business then the banks should accept their funds as "loans" and not "deposits". The bank may earn profit by investing these funds somewhere else in business but guarantee returning the depositors their principal amount at the end of the fixed term.

And those who wish to invest their money in the known business conducted by the bank, instead of keeping their funds as "deposits", the banks should make a general partnership deal with them, invest all such funds in different kinds of trade, industrial, agricultural and other such enterprises that come under the ambit of bank operations and distribute the profits earned from this overall business according to an agreed upon proportion among them exactly the way profits are distributed among the shareholders.

- (d) There are different ways of opening letter of credit from the banks, whose Islamic position is separate. Where a bank is required to issue merely a certificate of confidence with reference to the reliability of a person,

there, the bank could legitimately charge fee only for office expenses. And where a bank is obliged to pay amount to the other party, there, it should not charge interest. Instead of that, various legitimate means could be adopted. For example, banks should not charge any interest over the money in the current accounts belonging to businessmen, but rather charge fee for maintaining the accounts and their records and lend these amounts for short periods of time to entrepreneurs without charging any interest. Banks should not charge any interest to borrowers but can charge them a fee for meeting the office overheads.

- (e) The element of interest must be eliminated from all the government institutions and the government itself. Instead of that, with little focus and *Ijtihad* (independent reasoning and judgment) various other ways could be created which would be legal and profitable. A comprehensive discussion in few words about all such institutions cannot be made here. The first and foremost need is to recognize the unlawful as unlawful and then resolve to save oneself from it. After this, a committee be appointed in every company that monitors the unlawful ways the company's operations get contaminated keeping in mind all the operational activities. The committee should suggest the various alternatives that are not only legal and in accordance with the Islamic injunctions but also practical and profitable. The foremost thing is a change of our mentality wherein we insist on blindly following the same path of the West which we are accustomed to by now. And we put our entire emphasis on the point that somehow this (Westernized) path be made lawful for us. Our love for comfort does not allow us to apply our minds and work a little hard so as to create new ways. Unfortunately, the entire nation is afflicted with the disease of "*Taqleed-e-Jaamid*" (static and rigid

imitation of the past). Both the clergy and the Western educated are equally afflicted with it.

- (f) No interest should be paid over the government loans taken from the people of that country. Instead of that, government should manage the funds according to business principles and invest it in projects / enterprises and share the profits earned according to a fixed percentage with the people whose money it has been using. Then, when the time period for which money was borrowed from them expires, then automatically their share in the profits would also come to an end. Actually, no significant change is required in this scenario. The only thing required is merely to convert the loan taken at specific rate of interest into partnership based on proportional profit.

The loans taken from foreign countries are substantially complex. Until a detailed analysis of all such loans is made, it cannot be said what kind of loans these are and to what extent efforts could be made to save oneself from unlawfulness in this matter. However the only thing which I can say in as a matter of principle is that first of all the focus of our efforts should be to exterminate interest from our country and where there is no way of saving oneself from interest there this menace must be tolerated until new ways come up. We are accountable to Allah only to the extent of our ability. If we try to save ourselves from this sin to the maximum extent possible, then in a situation where we are helpless and without power, we may hope for God's forgiveness.

APPENDIX III

THE QUESTION OF INTEREST IN DAR AL-HARB

by

Late Maulana Manazir Ahsan Geelani

A group of scholars, while debating over interest has adopted the position that India is a *Dar al-Harb* (territory of war) and hence it is permissible to take interest from non-Muslims in India as they are like the enemy combatants of a "*Dar al-Harb*". Maulana Manazir Ahsan Saheb has presented this facet very strongly in the below article and we are reproducing it here verbatim only to acquaint our readers about his perspective. We have criticized this article comprehensively in the latter part of this book. However certain arguments (of Maulana Geelani) have been rebutted (there and then) as required and can be seen in the footnotes. While reading this discussion one should appreciate that this debate took place in 1936-37.

(Late Maulana Manazir Ahsan Geelani's article is reproduced below)

The Islamic perspective regarding countries under an un-Islamic government.

There can be only two possibilities regarding the countries under the dominion non-Muslims. Either an Islamic government was never established in that country or an Islamic government was established (at some point of time) but was overthrown in some kind of international conflict and the country then became occupied by non-Muslims. In the first situation the non-Muslims hold sway over its lands and counties. Who can doubt that such a country is under non

Muslim hegemony? But there is some debate and controversy regarding the second situation. *Qazi al Qaza lil Daula al Abbasia Imam Abu Yusuf* and *Muddaween e Fiqh* Imam Muhammad Shaibani have opined (given a fatwa / verdict) that:

إِنْ دَارَ الْإِسْلَامُ تَصِيرُ دَارَ الْكُفْرِ يُظْهِرُ أَحْكَامَ الْكُفْرِ فِيهَا -

"A Dar al-Islam (territory of Islam) changes to a Dar al-Kufr (territory of unbelief) when the lex terrae (law of the land i.e. including both statute law and common law) becomes un-Islamic"

(reference *Badai al Sana Kaai Shani* vol 7 page 13)

In the *Fatawa Alameeriya* the enforcement of un-Islamic laws has been described thus

أَنْ عَلَى الْإِشْتِهَارِ وَأَنْ لَا يَحْكُمَ فِيهَا بِحُكْمِ أَهْلِ الْإِسْلَامِ -

"that the enforcement shall be open and unconcealed and that the judgments should not be pronounced according to the laws of Islam"

This means that in a country where the laws as given by Allah and elucidated by His Prophet Muhammad (pbuh) are not enforceable, then that country becomes an un-Islamic country and the government an un-Islamic government. No Islamic laws govern the country and the laws may have been devised by un-Islamic thinkers or derived from un-Islamic sources. In all such cases the country remains (classified as) un-Islamic. Thus such a country where the Islamic laws have been discarded and the law of the land is un-Islamic, then neither does the country remain Islamic nor can its government be considered Islamic. However the above is just a generic interpretation. Imam Abu Hanifah (.r) has been more clear and specific in describing the real concept of an Islamic state. He says that:

إِنْ دَارَ الْإِسْلَامُ لَا تَصِيرُ دَارَ الْكُفْرِ الْأَبْلَاثِ شَرَائِطٍ أَخَدَهَا ظَهُورُ
أَحْكَامَ الْكُفْرِ فِيهَا الْثَانِيَةُ أَنْ تَكُونَ مُلْحِقَةً بِدارِ الْكُفْرِ وَالثَالِثَةُ أَنْ لَا
يَنْفُذَ فِيهَا مُسْلِمٌ أَوْ ذِيَّةٌ إِمَّا بِالْأَمَانِ الْأَوَّلِ -

“An Islamic state becomes un-Islamic if it satisfies three conditions. One: the un-Islamic laws must be enforced there, two: it must be geographically adjacent to some Dar al-Kufr (territory of disbelief), three: that no Muslim or “dhimmi” (non-Muslim citizen of an Islamic state) should have the rights and privileges that they previously had under an Islamic state.”

(reference “Badai al Sanai Kaa Shani Vol 7 page 13)

The reality is that most of the governments in today's world are un-Islamic. However neither do I know their real condition nor do I have any evidence regarding their various characteristics according to Islamic law. However we can look at India⁴⁸ as an example and find out how the legal conceptualization of an Islamic state as given by Imam Abu Hanifah (.r) can be applied to the situation in India. It is very obvious that in India we are governed by British law and not the Shariah (Islamic law). The Islamic laws derived from the Book of Allah and the Hadith of the Prophet (pbuh) are not enforced here. The law of the land is as conceived by its un-Islamic thinkers (may be by one or more Indian / non-Indians). Thus the situation in India where un-Islamic laws are enforced clearly satisfies the first condition (that needs to be fulfilled for a country to be termed *Dar al-Kufr* (territory of disbelief)) set by Imam Abu Hanifah (.r).

In the same way it is very clear that the situation in India also satisfies the second condition (set by Imam Abu Hanifah (.r) for a country to be termed *Dar al-Kufr* (territory of disbelief)). Who does not know that the geographic boundaries of India are adjacent to non Muslim countries and they are situated in such a way that no Islamic country is located in between India and her neighbouring countries.

We find in Alamgeeri (reference Manqool Az Shaami page # 277)

عَدَمِ اِتِّصَالٍ بِأَنْ لَا يَتَخَلَّ بِنَهَا بَلْدَةٌ مِنْ بَلَادِ الْإِسْلَامِ -

⁴⁸ that is India before partition

"Adam Ittisaal" means that no Islamic town or city should be located between Dar al-Islam and Dar al-Kufr."

The northern and eastern borders of India are not very densely populated because of the inhospitable terrain. As far as the coastal borders are concerned, from the beginning they have been under the complete control of non Muslim powers to the extent that one cannot enter those waters without their permission. And even if such geographic proximity through the ocean does not exist then merely neighbouring each other via land suffices to meet the second condition. As far as the general ruling regarding sea borders is concerned the Islamic jurists have opined that (reference Shaami page 277)

ان بحر الملاع ملحق بدار الحرب

*"the ocean coast will be considered to be part of the non-Muslim territory"*⁴⁹

Thus in whatever way you look at it there can be no doubt over its certainty. Imam Abu Hanifah (.r) wanted to clarify that if an un-Islamic power captures a country that is surrounded by Islamic nations then this subjugation should not be considered permanent and it must not be assumed that the formation of an Islamic government there is difficult or no longer possible. The fuqaha (jurists) have explained it and some part of that will appear subsequently with regards to a certain issue.

Now as far as the third condition is concerned then it is obvious that along with people of other faiths Muslims too are subject to the death penalty under various laws and penal codes

⁴⁹ The Islamic jurists had written these judgments at the time when naval piracy was quite rampant and the navy of the Islamic government was not strong enough to establish control along its naval boundaries. To classify this ruling as general and for all times is incorrect. Today if an Islamic government acquires that level of control over its seas and naval boundaries as the present day British government does possess, then we will surely divest ourselves of that ruling and will not consider our naval and water territory to be part of the *Dar al-Harb*. (Maududi)

(of the un-Islamic country that was previously Islamic). It is not at all considered (by the laws of the un-Islamic country) if the (Muslim) accused is entitled to be pardoned under the Islamic laws.

In the same way the courts (in India) generally give judgments regarding the distribution of a Muslim's wealth and property and do not entertain any thought about such distribution being permissible under Islamic laws or not. Lakhs and crores of rupees are awarded on a daily basis in the form of interest by the courts. And why only interest there are numerous such instances when the wealth of a person that was considered safe and legitimate according to the Islamic Shariah but the law of the land held that it is illegitimate and needs to be snatched away and given to other claimants.

This is the sorry state of affairs as far as security of life and wealth is concerned. Now look the pathetic situation regarding protecting ones honour and reputation. Muslims are punished through various sections of the penal code like imprisonment, exile and fines. But is it ever even considered today whether the dignity and honour of the convict too deserved to be condemned and attacked? Was this in accordance to the spirit of Islamic law? I do not want to state that Muslims in India are not living in peace and security. My argument is that they have not attained the peace and security they would have got had they been living under an Islamic state. I say this because Imam Abu Hanifah has himself used a word while explaining the word 'amaan' (peace and security)

امنا بِالْأَمَانِ الْأَوَّلُ هُوَ أَمَانُ الْمُسْلِمِينَ (بداعي)

“that is amaan (peace and security) implies the peace and security which is guaranteed as per the Islamic laws and regulations.” (Badayi)

In Alamgeeri it has been further explained (about when an Islamic state becomes un-Islamic) in more clear terms.

أَئِ الَّذِي كَانَ تَأْبِيَا قَبْلَ اسْتِنْدَاءِ الْكُفَّارِ لِلْمُسْلِمِ بِاسْلَامِهِ وَلِلَّذِي بَعْدَ النَّزْمَةِ
"that is the peace and security that Muslims and 'dhimmis' (non-Muslim citizens in an Islamic state) were enjoying under Islamic governance would no longer be guaranteed and available." (Manqool alh Shaami Vol 3 page 277)

And (let us accept) that this is the reality. Wherever un-Islamic forces have gained ascendancy and held the reins of power, (over a land) then they have enforced their un-Islamic laws (in that country) and it would be strange to call such a country an Islamic state. Secondly which (non-Muslim) government will permit Muslims to wittingly assume their country and government to be Islamic? In fact it is quite possible that they may declare it to be a crime.

Sometimes Muslim jurists term such a country to be *Dar al-Harb* (territory of war). Maybe this is the reason for the misunderstanding (behind this terminology) otherwise the old Islamic jurists have mostly termed this country as *Dar al-Kufr* (territory of disbelief) instead of '*Dar al-Islam*' (territory of Islam), You have just read the piece from the book (بدائع) (Badai). The author (Imam Abu Hanifah (.r)) has mostly used the term *Dar al-Kufr* in his book which simply means a place not having an Islamic government. After all a country where we do not have an Islamic government or a country that is not in the hands of Muslims; can Muslims start calling such a country as a Muslim country and under Muslim rule? Such a play of words would be quite comical. This was regarding the first condition (an Islamic state becomes un-Islamic if the un-Islamic laws are enforced there). Now let us answer the second condition in some detail.

The constitutional conduct of Muslims under an un-Islamic government

Islam assumes that Muslims are free citizens. Islam declares freedom to be the natural and divine right of Muslims.

However the Islamic jurists have opined (given a fatwa) regarding a situation in which Muslims have to go and reside in un-Islamic countries temporarily. In that case what should be the conduct of Muslims towards the people of the un-Islamic government in the light of Islamic laws and regulations? Obviously one of the legal positions that can be adopted is that the Muslims of that country have agreed (pledged) with its government that they shall abide by its laws, rules and regulations and shall not disturb the law and order in the country. According to the Islamic Shariah such a Muslim is called "Muslim *mustamin*" (Muslim who seeks security from hostilities and claims safe conduct in a non-Muslim country).

In the Holy Quran the general ruling regarding pledge is:

وَالَّذِينَ هُمْ لِعَهْدِهِمْ رَاغُونَ - أُوفُوا بِالْعَهْدِ

(Successful are) those (Muslims) who faithfully keep their promises and honour their covenants

Islam has associated and equated pledge and covenant very forcefully with responsibility and accountability and this is the teaching of Islam regarding very ordinary pledges and promises. Regarding international pledges and covenants a very clear law has been imposed on Muslims in the following words.

إِلَّا الَّذِينَ عَاهَدْتُمْ مِنَ الْمُشْرِكِينَ ثُمَّ لَمْ يَنْقُضُوكُمْ شَيْئًا وَلَمْ يُظَا^①
هِرُوا عَلَيْكُمْ أَحَدًا فَأَتَمُّوا إِلَيْهِمْ عَهْدَهُمْ إِلَى مُدَّتِهِمْ إِنَّ اللَّهَ يُحِبُّ
الْمُتَّقِينَ

(But the treaties are) not dissolved with those Pagans with whom ye have entered into alliance and who have not subsequently failed you in aught, nor aided any one against you. So fulfill your engagements with them to the end of their term: for Allah loves the righteous.

(Surah Tauba : 4)

Presently I will not be able to explain what rules and regulations apply in the absence of any pledge or covenant or

in a situation of having a breach of the covenant at the hands of the non Muslim community. Here I only wish to present the sub-section of the “law of covenants” because of which it becomes obligatory for Muslims to follow the covenants and treaties that they have agreed with (the non-Muslims). The Prophet Muhammad (pbuh) has clarified the fate of a Muslim who breaks covenants and treaties.

إِنَّ الْغَادِرَ يَنْصَبُ لَهُ لِوَاءٌ يَوْمَ الْقِيَمَةِ فِيْقَالَ اللَّهُ غُدْرَةً فُلَانٌ۔ (ابوداؤد)

“the one who breaks a covenant will have a bridle of fire put on him on the day of Resurrection and will be told this mark is for so and so.....

In another tradition

وَفِي رَوَايَةِ إِلَيْكُمْ غَادِرٌ لِوَاءٌ يَرْجَزُ عِنْدَ بَابِ اسْتِهِ يَوْمَ الْقِيمَةِ يُعْرَفُ بِهِ غُدْرَةً۔

The Prophet (pbuh) said that “the one who breaks a covenant will be pressed with a bridle of fire on a specific part (of his body) and he will be identified with that mark on the day of Resurrection.

When Prophet (pbuh) would bid farewell to the commanders of the armies (as they left for various expeditions), he would advise them that

لَا تَنْهَلُوا وَلَا تَغْدِرُوا “ensure that you are not dishonest with someone and do not break your promise.”

This is the reason why the Islamic scholars have given a consensual verdict on the impermissibility of breaking covenants / promises / agreements.

Ibn Hammam says:

الْغَدْرُ حَرَامٌ بِالْأَجْمَاعِ

There is a consensus regarding the issue of breaking of covenants / treaties; that it is prohibited.

(Fatah al Qadeer vol. 5, p.336)

The Unparalleled Muslim Love for Peace

Obviously after studying these legal covenants we come to the conclusion that the Muslims who live as protected citizens under a non-Muslim government with an agreement of peace and security with it, have some grave and difficult responsibilities.

It is mentioned in Hidayah that:

إِذَا دَخَلَ الْمُسْلِمُ دَارَ الْحَرْبِ فَلَا يَجِدُ لَهُ أَنْ يَتَعَرَّضَ لِمَنِ ءِمْوَالِهِمْ
وَلَا مِنْ دِمَانِهِمْ لِأَنَّهُ ضَمَنْ أَنَّ لَا يَتَعَرَّضَ بِهِمْ بِالاسْتِئْمَانِ

which means that “when Muslims enter any un-Islamic country (Dar al-Harb), then it is not lawful for them to boycott or keep away from the citizens of that country and its finances, as he is legally obliged not to do so. This sense of responsibility is developed by respecting the covenant and agreement with that un-Islamic country”.

It means that when any Muslim enters a (non-Muslim) country after seeking protection, then it is not at all permissible for that Muslim to disobey the laws that have been laid down to protect the life, wealth, respect and honour of its citizens. If a Muslim commits one of those acts and deeds that the un-Islamic government have declared unlawful, then not only would he be guilty according to the law but would also be a rebel according to the Divine law. He will be pronounced guilty by Islam, Quran and God. He will be a sinner and guilty of such a crime that has been prohibited by the Quran, Hadith and the *ijma* (consensus of the people). Is there any other religion that enjoins its followers to strictly follow the laws and the constitution of another nation? Muslims are often accused of being disloyal but people do not know that there is no other community that is more peace loving, more respectful of the constitution and the law of the land (than the Muslims).

فَأَيُّ الْفَرِيقَيْنِ أَحَقُّ بِالْأَمْنِ إِنْ كُنْتُمْ تَعْلَمُونَ ﴿٨١﴾

. Then, which of the two parties has better title to security?
Tell us, if you have any knowledge! (Al-Anam:81).

Probably this is the reason why some Islamic scholars have given a fatwa (verdict) that the one who inserts more than the permissible weight in postal envelopes and the one who carries more luggage than what is allowed by the railways (travel) is not only breaking the law of the land but is also an offender before Allah and a criminal in the eyes of religion.

An Important Question pertaining to International Law

Here is an important question pertaining to international law that begs immediate clarification. Generally a lot of misconceptions are prevalent amongst people because of a lack of understanding. There is also a possibility that a similar question might have arisen with regards to other laws. But this question has arisen in international law in the context of Islamic laws. Different nations attack each other at different times seizing suitable opportunity. They attack and lay hands on the life, property and assets of the other nation. Presently we do not want to debate the justification or impermissibility of this aggression. Is this attack (on the territorial sovereignty of another nation) lawful and if so then under what conditions? Rather the question that we have before us presently is that the way in which one nation has captured the land and territory of another nation, how far is that seizure justified and beneficial to the nation? In other words does that capture now make the aggressor the rightful owner of the territory both morally and legally? Often pious and law abiding Muslims are perplexed and grapple with this question. Supposing an Englishman gets some asset (wealth or property) as part of war booty / spoils of war but which belongs to Germany or any other nation (that the British captured) and the Englishman wants to sell that asset to a Muslim. For other communities this might be quite irrelevant but for a Muslim anything that he possesses does not become rightfully his, till as time it is approved by the Islamic Shariah. It is therefore incumbent upon the Muslim to find out from his Shariah if the British have become rightful owners of

this asset after defeating Germany. If the British have become owners of those assets then it is lawful for Muslims to purchase those things and start using them. But if the asset does not belong rightfully to the British then they have no right to sell it and then how can a Muslim become its owner after its purchase? Anyways this is a very interesting question in international law. Islamic jurists have established various topics and chapters under it and have done a comprehensive and exhaustive discussion over it. There are certain possibilities and combination (of circumstances) which fall under this issue namely:

1.) One that if the property of a non-Muslim⁵⁰ nation has been captured by Islamic forces then the subsequent owners of the property are termed to be lawful and legitimate.

It is mentioned in Fatah al Qadeer that:

إذا غلبَ الْزُّكُورُ عَلَى كُفَّارِ الرُّومِ فَسَبُّوهُمْ وَأَخْذُوا أَمْوَالَهُمْ مَلْكُوكُوهَا۔

(ج ۳ ص ۱۵۳)

If the non-Muslims from Turkey capture some territory belonging to the non-Muslims of Europe and then carry the loot and plunder back home, then they will become its owners.

(Vol. 3 p. 184)

2*) The second possibility is that a non-Muslim army acquires complete control over the land and property of a Muslim nation. In this situation also Imam Malik, Imam Ahmed and Imam Abu Hanifah have opined that

إذا غلَبُوا عَلَى أَمْوَالِ النَّاسِ وَعَيَّاداً بِاللَّهِ وَأَخْرَزُوهَا مِنْ دَارِيهِمْ مَلْكُوكُوهَا۔

"And if God forbid any non Muslims capture some wealth belonging to Muslims and takes its ownership then that wealth would now belong to them."

(Hidayah)

⁵⁰ Please note that whenever I refer to a non-Muslim as an unbeliever (non-Muslim) I am referring to the non-Muslim who does not have any security guarantees of life and property from any Islamic government. (Fazil Geelani)

Thus not only does a non-Muslim become the legitimate owner of the wealth and property of both Muslims and non-Muslims, but when a non-Muslim acquires complete possession of the wealth of a Muslim then Islam also has the prerogative to sanctify and legitimize this possession. Can you still blame Islam for not being generous and liberal?

Classifying the Wealth (from war booty) as Lawful or Unlawful

Imam Shafee (r) had a difference of opinion on the above mentioned second possibility with other scholars. Hence in order to prove that this law is perfectly Islamic, the jurists and experts have presented very clear cut proofs from the Quran, Hadith and other reliable textual sources. However it's full text is not being reproduced here as the topic (under discussion) is getting too elongated. I am merely presenting the legal aspect of the investigation (research) derived from the Quran and Hadith:

إِنَّ الْأَنْتِيلَاءَ وَرَدَ عَلَى مَا لِلْمُجَاهِدِ فِي الصَّبَرِ سَبِيلًا لِلْمُلْكِ -

An unbeliever has obtained possession of a completely legal asset, hence this possession will become the basis of legitimacy (to declare that the asset now belongs to the unbeliever). – Hidayah, p.255

It means that the wealth of a Muslim is completely sacrosanct and untouchable as far as Muslims are concerned. All Muslims are expected to respect and honour the wealth, property and assets of other fellow Muslims and not to encroach and seize it without any valid reason. However non-Muslims are exempted from this rule. For them it is completely permissible. Thus you can find in the book Shaami vol 3 page 267.

لَأَنَّ الْعِصْنَمَةَ مِنْ جَمِيعِ الْأَخْكَامِ الْمُشْرُوَعَةِ وَهُمْ لَمْ يُخَاطِبُوا بِهَا فَبَقِيَ فِي

حَقِّهِمْ مَالًا غَيْرَ مَغْصُومٍ أَنِّي هُوَ مُجَاهِدٌ يَمْلِكُونَهُ (٢٤٧٣)

As protection of honour is an Islamic injunction and law, the non-Muslims of the country are exempted from it. Hence the wealth and assets of Muslims are not inviolable for them. It means their wealth is legal and permissible for them (to acquire).

Now naturally the third possibility or situation comes in the picture. Which is if a Muslim captures the wealth / assets of a non-Muslim then would he become its legitimate owner? The answer to this question is very obvious because of the following international law. When a non-Muslim becomes the legitimate owner of the acquired property of a Muslim, then why should this right not be given to a Muslim both morally, legally and by religion? It is mentioned in Badayi page 132 Kashani

مَالُ الْحَرَبِيِّ مُبَاحٌ لِلَّهِ لَا عِصْمَةَ لِمَالِ الْخَرْبَى۔ (۱۳۲۲ کاشانی)

"the wealth of those non-Muslims which is not guaranteed by the Islamic government becomes legitimate and legal (to be seized) as their wealth is not sanctified and sacrosanct.

How strange is it that the nations who have not given their wealth and property under the custody and responsibility of the Muslims, they refuse the security and custody of Islam, then what can Islam do except refusing to take their custodianship (in reciprocation)? If you absolve yourself of all relations with God, then why should God too not absolve Himself of the responsibility of protecting your life and property?

That is why it is mentioned in the Quran

إِنَّ اللَّهَ بَرِئٌ مِّنَ الْمُشْرِكِينَ

"Allah is not obliged (He is free from any liability) to protect the pagans"

Is there any other alternative? When all nations of the world capture and seize the property, wealth and assets of Muslims as and when it is opportune as is mentioned in Quran in (Surah Mumtahina :62)

إِنْ يَفْعَلُوْهُ كُمْ أَعْدَأْهُ وَيَبْسُطُوا إِلَيْكُمْ أَيْمَنُهُمْ وَالسِّتْهُمْ
بِالشُّوَّعِ وَذُو الْكُفْرُوْنَ ۝

If they were to get the better of you, they would behave to you as enemies, and stretch forth their hands and their tongues against you for evil: and they desire that ye should reject the Truth. (Surah Mumtahina : 2)

Then after this Quranic revelation and definite reality, would it not be a grave injustice if Islam would not have given Muslims a similar permission?

If the Quran gives this command later that:

قَاتِلُوا الَّذِيْنَ لَا يُؤْمِنُونَ بِاَللَّهِ وَلَا بِيَوْمِ الْاِحْيَ وَلَا يَحْرِمُونَ مَا حَرَّمَ اللَّهُ
وَرَسُولُهُ وَلَا يَدِينُونَ دِيْنَ الْحَقِّ وَمِنَ الَّذِيْنَ اُتُوا الْكِتَابَ حَتَّىٰ يُعْظُمُوا الْجِزِيَّةَ
عَنْ يَدِهِمْ صَغِرُوْنَ ۝

Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the religion of Truth, (even if they are) of the People of the Book, until they pay the Jizya with willing submission, and feel themselves subdued.
(Surah Tauba : 29)

Then does it mean that the above benefit is more than the rule that has been researched by Islamic jurisprudence which is that the wealth and property of Muslims is legitimate for non-Muslims (to seize and acquire) according to Islamic law itself. In the same way the wealth and property of non-Muslims too is legal and permissible (to be seized and taken away) by Muslims according to the spirit of the Shariah of Allah and His Messenger. If Muslims capture and seize them then they will become their rightful owners who are authorized to use and utilize them⁵¹.

⁵¹ To think that the law of exemption and killing is only specific to the non-Muslims who kill and fight but not applicable to the non-Muslims who do not fight the Muslims and have become their "dhimmis" (those in their

protection) is only due to ignorance of the Quran and the Hadith. After all in the first battle of Islam (battle of Badar) did not Allah promise (the Muslims) the non-combatant trade caravan (as war booty)? The Noble Companions (r.) also had the same intention (of capturing and taking possession of the trade caravan). If this was illegal and not permitted then the Quran should have objected and stopped this. Regarding the Treaty of Hudaibiya also the Noble Companion Abu Baseer (.r) and his friends had sustained themselves through the non-sanctified wealth of the trade caravans. Once upon a time the Noble Companion Abu Zar (.r) also sustained himself similarly. Thus anyone irrespective of whether he is a combatant or non-combatant, the act may or may not be sanctioned by the Amir (chief) - the wealth and property of a non-Muslim, non-*dhimmi* (not under the custodianship of Islam) is legal and permissible (to be seized) by Muslims.

Abu Bakar Jissas writes in his tafsir (Quranic exegesis)

وَلَا تَعْلَمُ أَحَدًا مِنَ الْفَقَهَاءِ يَخْطُرُ (يمنع) قِتالَ مَنْ اعْتَزَّ بِتَالِنَا مِنَ
الْمُشَرِّكِينَ

There is a Hadith in Sahih Muslim

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ تَعَالَى عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ
قَالَ إِيمَّا قَرْبَةً تَيْتَمُوا مَا فَاقْسُمْتُمْ فِيهَا وَإِيمَّا قَرْبَةً غَنْمَةً اللَّهُ وَرَسُولُهُ
فَإِنْ خَمْسَهَا لِلَّهِ وَرَسُولِهِ ثُمَّ هِيَ لَكُمْ

In contrast to the above Qazi Ayaz writes

أَنَّ الْمُزَادَ بِالْقَرْبَةِ الْأَوَّلِ هِيَ الَّتِي لَمْ يُؤْجَفْ عَلَيْهَا الْمُسْلِمُونَ بِخَيْلٍ وَّ
رِكَابٍ تَلَى أَجْلِي عَنْهَا أَمْلَهَا وَصَالَحُوا فَيَكُونُ سَهْمُهُمْ فِيهَا كَمَا تَقْرِفُ
الْفَيْ - ۱۲ - سُبُلُ السَّلَام - (فاضل گیلانی)

Note by Maududi – Here Maulana (Geelani) has made a grave error in neglecting the difference between those who are belligerent and those who are non belligerent. The nation becomes “muharib” when it is at war with the Muslims. The wealth and property of such a person or a group from this (muharib) nation irrespective of being a combatant or non-combatant is permissible (to be seized and acquired). We are allowed to capture its trade caravans. We will arrest its people if they come in touch with us and take their wealth and possessions. All the examples that Maulana has given belong to the same category. But the wealth and property of the nation that

is not at war with us, irrespective of it having a treaty with us or not is not lawful (to be taken / seized).

In the Quran it is mentioned that

لَا يَنْهَا اللَّهُ عَنِ الظَّالِمِينَ لَمْ يَعْلَمُوْ كُفْرَهُ فِي التِّبْيَانِ وَلَمْ يُغْرِجُوهُ كُفْرَهُ قَنْ وَيَأْرِكُهُ أَنْ تَبَرُّوهُمْ
وَتُقْسِمُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِمِينَ ④

"Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those who are just."

(Surah Mumtahina : 8)

This is only logical and just. Otherwise if the wealth and property of every non-dhimmi (not under the protection of Islam) were lawful (to be acquired) under all circumstances, as can be deciphered by what Maulana (Geelani) is suggesting then the position of the Muslim community as the best community amongst all other nations would no longer be valid but it would appear as if the Muslim community is the one that loots and usurps. Plundering (the wealth and property of) the other communities and nations would become its avowed profession and its existence in the world be a disaster and calamity.

And then when we are ready to accept non-Muslims becoming the legitimate owners of the wealth and property of Muslims acquired by force and oppression then why should not Muslims have the same right of usurping and expropriating the wealth and property of non-Muslims. And that too pertains to conditions of war. During times of peace Islam does not permit its citizens to loot and plunder other people from the 'ghair-muharib' (non-combatant) communities. However if some people from the other community start looting the Muslims then there will be condition of war between them and at that time their life and property will become lawful for Muslims.

Where it has been declared in the Quran that Allah is free of any obligation towards the protection of the Mushrikeen (unbelievers), there it has also been clearly mentioned that: **وَمَنْ يَتُؤْمِنْ أَوْلَ مَرَّةً** the mischief was first initiated by them.

Muslims should not initiate or be first in usurping the wealth and property of non-Muslims and in case the looting is initiated by the other community which has a treaty (of peace / non aggression) with the Muslims then **فَانْبَذُ الْزَّهْمَ** and if there is no treaty with the Muslims then they will respond to this act of aggression and belligerence. After this the entire community will be termed as 'harbi' (belligerent) and their life and property will become lawful for Muslims.(Maududi)

Coming back to the topic

Anyways the real argument was that what should be the constitutional position of the Muslims in an un-Islamic country and what should be the nature of their relationship with its (non-Muslim) citizens? It was an extremely plain and simple issue but in order to bring in more clarity I had to digress from the main argument for a little while. Now I shall return to the main subject.

I have said earlier that it is obligatory for a Muslim '*mustamin*' (protected citizen in a un-Islamic country) to abide by the laws of the non-Muslim country that guarantees him peace and security upon entry. Attacking someone's wealth, life and property is akin to revolt / rebellion. And revolt is unlawful according to Quran, Hadith and by the 'Ijma' (consensus of the community). In conclusion it is the religious responsibility of Muslims to follow the law of the land. I have already stated that posting an additional gram in the envelope and loading more than even a quarter of a kilogram in the rail luggage than legally permissible is unlawful. This is the reason why Muslims should be the most law abiding citizens of any country as this is required of their religion.

But the issue that needs to be debated is that of say interest which is totally unlawful according to Islamic law. According to the Islamic Shariah it is absolutely unlawful for any Muslim to gain wealth with the help of financial transactions involving interest. But (in contrast) under the un-Islamic laws interest is perfectly lawful. In fact under various conditions the un-Islamic government itself does business and undertakes transactions on a large scale which are based on interest. In such a scenario what are Muslims supposed to do? Obviously if he acquires wealth from non-Muslims with the status of a Muslim *mustamin* (a Muslim under the protection of a un-Islamic government) then he can definitely not be held guilty of breach of covenant, breaking the law (of the land) or of

revolt / rebellion. Thus even according to Islamic law he is not guilty of breaking the law of covenants or contract.

We then come to the argument regarding the wealth that a Muslim has made from someone else which was based on interest based transactions which according to the law of the land was perfectly lawful but which is unlawful and prohibited according to Islam. In other words did he gain such wealth that though legally permissible was not sanctified / lawful according to Islam, but in fact it was inviolable. We have just gone through the laws of the Islamic Shariah and even the Quran that confirm that this kind of wealth is legitimate and lawful according to Islam.⁵²

Then what should a Muslim do? Should he not follow the Quran and Islam which declares it to be lawful and legitimate? I don't understand how the wealth that neither the law of the land nor the Islamic Shariah declares to be unlawful and in fact commands us to take, how can the poor Muslim consider it unlawful and illegal? Should he rebel against the law of the

⁵² If we accept the argument of Maulana (Manazir Ahsan Geelani) then it would imply that in India any Muslim who robs and steals the wealth of a non-Muslim or takes money through corruption and cheating will only be guilty according to the law of the land and if at all he will be held guilty by Islam then it will only be for the crime that he committed a breach of covenant. He would not be guilty of the acts which are considered to be crimes according to Islamic law. Thus if God forbid a Muslim woman undertakes prostitution as her profession in a non-Muslim country and earns money from (her) non-Muslim (clients) then that earning would also have to be declared pure and lawful. That is because the law of the non-Muslims deem that earning to be lawful and issues licenses for engaging in that profession (of prostitution). She is not guilty of breach of covenant. And when the Islamic Shariah declares the wealth of a non-protected non-Muslim to be lawful irrespective of how this wealth was earned, then it is not deemed to be a embezzlement and a crime according to the spirit of the Shariah? Maybe Maulana will not accept this conclusion but it is what can be logically deduced by his way of argument. (Maududi)

land? Or he should break the law of the Shariah? Is there any refuge for the Muslim after that?

This is the extraordinary obligation of the Islamic law for which the religious verdict (fatwa) by the most strict and alert jurist Imam Abu Hanifah (.r) is absolutely crystal clear and unambiguous and has been rendered by Imam Muhammad in Seer Kabeer.

وإذا دخل المسلم دار الحرب يا ملأ ياملا ملأ ياخذ منهم أموالهم
بظيب أنفسهم يا وجي كان لانه إنماأخذ المباح على وجهه عري عن
الغدر ف تكون ذلك طيبا له . منقول ازشامي ص - ٢١٠ ج ٣ مطبوعه مصر

When Muslims enter Dar al-Harb⁵³ (un-Islamic nation at war with Muslims) by signing a treaty / covenant with them

⁵³ By *Dar al-Harb* we mean the nation that is at war with Muslims and which does not have any treaty or agreement with the Islamic nation. The Muslim citizens of the Islamic nation even in times of war may procure an assurance of safe conduct for trade and business (from the non-Muslim nation) and may enter the non-Muslim territory and do business that is not under the aegis of any treaty or agreement. This law approved by the Hanafi school of thought cannot be applied to the *Dar al-Kufr* (territory of unbelief) where a Muslim community is not living as a '*muharib mustamin*' (combatant but under protection) but as a full-fledged citizen and has the freedom and right to practice his personal law. The fundamental flaw in the hypothesis that Maulana is proposing is that he is assuming every non-protected non-Muslim to be an enemy and every land that is not under occupation (by Muslims) to be *Dar al-Harb* (territory of war). This is a completely incorrect interpretation of the international law of Islam. The life and wealth of non-Muslims is lawful only under conditions of war and that too only for the Islamic government and not for the people who reside in the non-Muslim country which you are terming as '*harbi*' (belligerent). The Hanafi law only wants to suggest that when a Muslim enters a non-Muslim country with guarantees of peace there he can do trade and enter into business partnership on the basis of profit and loss. This permission is based on two reasons. One is that if the wealth of the enemy is actually lawful when it can be taken away by force then it should definitely be lawful if the wealth is earned through (business based on) profit and loss. The second reason is that conditions of war are something unsettling and disturbed. And under disturbed and abnormal conditions even the unlawful becomes lawful. (Maududi). (...contd. On next page)

then there is no problem for the Muslims to undertake financial transactions with the non-Muslims citizens of that nation irrespective of how that money was earned (by those non-Muslims)⁵⁴. This is because the Muslim has taken legal money and done so which is free from any violation of the law of the land, thus that money become lawful and permissible. (Manqool Shaami vol.4, page 210)

Obviously this verdict (fatwa) does not belong to the era in which Muslims were subjugated by non-Muslims. The era in which the learned Imam (Abu Hanifah) deduced this legal injunction at that time probably no one ever dreamt of the ugly collapse and decline of Muslims in terms of their core beliefs, their ethics and their moral conduct. And this Muslim decline resulted in the sudden appearance of an exceptionally resurgent and enlightened Europe.⁵⁵

⁵⁴ One point of view is to generalize these words (make them applicable without exception). Although it has been written by no less than a person of the stature of Imam Muhammad, but still it cannot be accepted without exception and imposing some conditions. Otherwise it will become lawful for Muslims to start consuming alcohol in the *Dar al-Harb* (territory of war) or open a brothel or for Muslim women to become prostitutes. (Maududi).

⁵⁵ Probably Imam Abu Hanifah (.r) never dreamt that the verdict that he gave for the traders and sailors who enter the non-Muslim countries with guarantees of peace and security could be applied to or be used for the millions of Muslims who live permanently in non-Muslim countries and who definitely have sufficient freedom to practice their economic and cultural life (according to Islam). The law that Imam Abu Hanifah has spelt out pertains only to the *Dar al-Harb* (territory of war) in which a Muslim from the *Dar al-Islam* (territory of Islam) enters under guarantees of peace and security. He did not mean that the Muslims who permanently reside in a non-Muslim country in large numbers are exempted from the Islamic laws concerning economics and earning ones livelihood and that all the issues related to money and finance (modes of income) that are considered unlawful (*haram*) become lawful in that non-Muslim country. In fact in such countries it is the responsibility of Muslims to keep away from its un-Islamic economy as far as possible and put all their efforts in changing the system into an Islamic system. But the way in which Maulana is applying (...contd. On next page)

When the Islamic jurists mention in their writings and rulings about the possible situation in which an un-Islamic government captures some land / territory belonging to an Islamic government then they preface the sentence with the words "God forbid" as if implying that something undesirable is taking place. This implies that the jurists are afraid even to assume such an event taking place. In such a situation you can understand how Imam-e-Azam (Imam Abu Hanifah) might have relented and acceded before some (peculiar) requirement of the time before the (firm injunctions) of the Shariah. And the reality is that there is practical proof of this verdict (fatwa) in the Quran and the authentic traditions (Hadith) of Prophet Muhammad (pbuh).

At the time when the Romans and Persians were at war, Abu Bakr Siddiq (r.) wagered with the Quraish in an un-Islamic country that is Mecca (which was not part of the Islamic state at that time) and asserted that the Quranic prophecy (that the Romans would overpower and defeat the Persians) would prove to be true. And when the prophecy was fulfilled the Prophet (pbuh) himself commanded (Abu Bakr (r.)) to take the camels pledged (by the Quraish) from their descendants. (Tirmizi)

The Islamic jurists derive this law from the above incident; otherwise obviously this kind of wager or bet is like a gamble which is absolutely unlawful and whose prohibition is established by very clear Quranic injunctions.⁵⁶

Islamic law the result will be that the millions of Muslims instead of serving their energies in transforming the economic and cultural system of the country (into an Islamic system) will themselves become absorbed into this oppressive system. (Maududi)

⁵⁶ It has been clarified in Tirmizi that this wager was placed at the time when the injunction / law of prohibition of security / pledge (which people take as a collateral while giving loans) was not revealed and enforced. This has also been clarified in Tafseer Ibn e Jareer. It is written in Tafseer Baidawi that when Abu Bakr Siddiq (r.) took the camels from the

Interest is not lawful in Dar al-Harb but fay is

A very strange concept is prevalent amongst people that interest becomes lawful in an un-Islamic country. In most cases it is the interpretation of laws and injunctions that becomes an obstacle in understanding the real problem. Otherwise the core issue is based on the Quranic law according to which it is totally wrong to assert that something which was prohibited earlier has now become lawful at some latter point of time. The truth about something being lawful (halal) is that whatever was lawful from the beginning was always held halal (lawful by Islam).

Imam e Azam (Abu Hanifah) declares as حلالاً طيباً (lawful and pure) only those things which have been termed by Allah as lawful. No Muslim has the right to change something that the Quran declares to be unlawful (haram) to become lawful - on the basis of his opinion or on the basis of some fictitious and imaginary Hadith? Especially (guilty) are those who consider things to be lawful simply on the basis of a Hadith with a single (source of) narration. They prefer them over the supplementary regulations of the clear cut Quranic injunctions. And this is the reason that Imam Abu Hanifah (who accepted the general applicability about the question of the wealth deemed lawful by the law of the land) not only considered interest to be lawful but also the wealth gained through gambling as lawful which is permitted as per the existing law prevailing in the country.

For example take the case of money earned through life insurance.⁵⁷

descendants of Ummayah bin Khalaf, he presented the camels to the Prophet (pbuh). The Prophet (peace be upon him) ordered the camels to be given as charity. From this we can deduce that this wealth was 'makrooh' (disliked / offensive). It was taken from the enemy but was not preferred to be put to personal use. (Maududi)

⁵⁷ Maulana (Geelani) has applied the rules and injunctions in Hanafi law pertaining to *Dar al-Harb* (territory of war) to the situation in India and has

thus made a terrible mistake. It would then imply that Muslims in India are permitted to earn by playing lottery, gambling and betting in horse racing and this income is 'tayyab' (lawful and pure) for them. If there is a religious fatwa (verdict) on (sanctifying) this then there would be no difference between a Muslim and a non-Muslim in economic terms. And as far as their economic life is concerned all the Muslims of India will become (like) non-Muslims.

The real mistake that Maulana (Geelani) is making is that he is considering the entire wealth of the non-Muslims to be lawful and legitimate (meant to be acquired) whose responsibility has not been taken by the Islamic government. Although this thought is not supported by any rule or law of the Quran and the Hadith.

The second mistake is that he is declaring a country (India) inhabited by non-Muslims to be *Dar al-Harb*, which is not actually a *Dar al-Harb*; if you go by the spirit of Islamic terminology. This is not only misinterpretation (of concepts and injunctions) but is also very dangerous for the Muslim community in terms of the results that it will produce. India was undoubtedly *Dar al-Harb* at that point of time when the British were trying to destroy the Islamic kingdoms in India. The Muslims were at that point of time obliged to sacrifice their lives for protecting the Islamic kingdoms. After they failed to do so (in defeating the British) they (the Muslims of India) should have done "Hijrat" (migrated to some Islamic country). But when they were vanquished (by England) and the British government was established (in India) and the Muslims accepted to live in this country with the permission to practice their personal laws – then India ceased being a *Dar al-Harb* (territory of war) and became a *Dar al-Kufr* (territory of disbelief) where Muslims live as (equal) citizens of the country and have the freedom to practice their religion as sanctioned by the laws and regulations of the nation. To deem such a country as *Dar al-Kufr* and then enforce all the exemptions that have been specially made for an exceptional situation such as *Dar al-Harb* is not only a violation of the principles of Islamic law but also extremely dangerous. This will result in Muslims giving up whatever little freedom they have in following their own laws in the country. The little prohibitions of the Shariah that are in place which guard their identity as a distinct community will also disappear. And Muslims will get absorbed in the un-Islamic system. Under extremely exceptional and abnormal circumstances only does Islam loosen and relax some of the rules and laws and gives some concessions to Muslims who are scattered and do not have any collective strength and are surrounded by non-Muslims at that time. But simultaneously it also commands that do not

According to the Islamic scholars gambling and interest hold a common position (in legal terms) but in Seer Kabeer Imam Muhammad narrates from Imam Abu Hanifah that:

أَوْ أَخْدَمًا لَا مِنْهُمْ بَطْرِيقُ الْقُمَارِ فَذَلِكَ كُلُّهُ طَيِّبٌ

"if they acquire money (from non-Muslims) through gambling then also it is pure and lawful".

Probably the question of interest is quite well known because of the mursal Hadith (narrated by a Taba'ee and not a Sahabi) of Imam Makhool (who is a reliable narrator according to the scholars of Hadith) which is often produced to support this point of view and the Hadith is as follows:

..عَنْ مَكْحُولٍ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يُرُو بَيْنَ الْخَرْبِ
وَالْمُسْلِمِ.. (اسندة بيهقى)

"It is narrated by Makhoor that Prophet Muhammad (pbuh) said that there is no interest between a harbi (non-Muslim enemy combatant) and a Muslim. (Baihaqi)

I don't know how people interpret this Hadith? Otherwise what is apparent from the meaning of the words is that if there is an interest based transaction between a Muslim and a non-dhimmi (un-protected) non-Muslim, then that amount will not be interest but according to the Quranic law of legitimacy, this amount will be lawful and pure for a Muslim.

Anyways if you go by the spirit of the Islamic Shariah, Quran, Hadith, way of the Noble Companions this is such a clear cut ruling that has no possibility of being negated and rejected. People raise the question of the argument or non-argument of the mursal Hadith by Makhoor (to reject the

wait and remain in such condition endlessly but try to come back to Dar al Islam as quickly as possible. Maulana (Geelani) is making these concessions common to such a community that is numerically in crores and is residing permanently in this country. The rules and laws of *Dar al-Harb* definitely do not apply to them. The Indian Muslims should try to follow the Islamic laws as far as possible and in fact they should serve all their energies to transform the *Dar al-Kufr* into a *Dar al-Islam*. (Maududi)

permissibility of interest) although it is (supposed to be) presented to argue in favour (of the permissibility of interest). Otherwise the reality is that to deem this kind of wealth to be lawful and pure is the result of the explicit injunction and ruling of the Quran.

Allama Ibn Hammam has very correctly written in Fatah al Qadeer that:

وَفِي التَّحْقِيقِ يَقْتَضِي أَنَّهُ لَوْلَمْ يَرْزُقْ مُكْحُولًا أَجَازَةَ الْتَّظَارِ الْمَذَكُورِ۔

(فتح القدير ج ٢ ص ١٧٨)

"And the result of research says that even if the Hadith narrated by Makhoor had not existed still the above mentioned would have permitted it."

(Fatah al Qadeer vol. 7, p.178)

Sahib e Badaya has on this very basis correctly interpreted the school of thought of Imam Abu Hanifah (r) that:

وَعَلَى هَذَا إِذَا دَخَلَ مُسْلِمٌ أَوْ ذِمَّى دَارَ الْحَرْبِ بِأَمَانٍ فَعَاقَدَ حَرْبِيًّا عَهْدَ

الرِّبَا أَوْ غَيْرِهِ مِنْ الْعُقُودِ الْفَاسِدَةِ فِي الْإِسْلَامِ جَازَ۔ (ص ١٣٢ - ج ٧)

"And on this basis the following situation exists that if a Muslim or a dhimmi (protected non-Muslim) enter a Dar al-Harb (territory of war) with an assurance of peace and security and conduct an interest based transaction or a similar kind of dealing with a non-Muslim which is invalid according to Islamic law then that transaction will be lawful and permitted".

(Vol.7 p.132)

The terminology of fay and phay

Hence it is my humble opinion that all such sources of income that a Muslim can avail in an un-Islamic country; instead of calling it interest, gambling or betting, it would be more appropriate if one could give it a special name "fay" which would mean the wealth that has been earned by Muslims

without any war, any bloodshed but in a peaceful manner and with the full approval and sanction of the law of the land.⁵⁸

I recollect that there is a word “phav” in the Hindi language which sounds similar to the word “fay” and also conveys its meaning to a certain extent. The elite will call those earnings as their earnings through “fay”. However the masses will not be able to pronounce the word “fay” and they will change it to “phav”. This change of terminology is also necessitated because of the danger pointed out by those who are very reliable in matters of religion. They think that if this issue is made public then after a period of time Muslims will totally forget if interest, gambling etc were prohibited by Islam. Hence I feel that these earnings should be called “fay”

⁵⁸ In the book Shami it is mentioned that

وَمَا أَخْذَ مِنْهُمْ بِلَا حَرْبٍ وَلَا قَهْرٍ كَالْهَدْنَةِ وَالصَّالِحِ فَهُوَ لَا غَنِيمَةٌ وَلَا حِكْمَةٌ حُكْمُ الْفَيِّ (ص ٢٥)

“and whatever is taken from them (non-Muslims) without combat and by force for example tax or the amount pledged in a treaty – then that is neither ghanimah (war booty) nor is it fay, rather it should be called “fee”.(p. 25)

It is mentioned in Fatah al Qadeer

فَكَانَ هَذَا اكْتِسَابٌ يَابِحُ مِنَ الْمُبَاحَاتِ كَالْأَنْتَطَابِ وَالْأَصْطِلَادِ

“this earning will be categorized as lawful for example collecting wood logs or catching fish.

Fay has been defined in Subl us Salam as

مُؤْمَنٌ مَّا حَصَّلَ لِلشَّـمِلِيْمِ مِنْ أَموَالِ الْكُفَّارِ وَمِنْ غَنِيمَةٍ خَرَبٍ وَلَا جِهَادٍ

‘The wealth that has been earned by Muslims from the wealth of the unbelievers without any war or fighting.’

And in the Quran itself it is mentioned regarding the land acquired from the (Jewish) tribe of Bani Nazeer (of Medina).

فَمَا أَوْجَحْتُمْ عَلَيْهِ مِنْ خَيْرٍ وَلَا رِكَابٌ

“for this ye made no expedition with either cavalry or camelry”

(Surah Al Hashr : 6)

In all the books of Hadith it is well known that the personal expenses of the Ahle Bayt (family of the Prophet (pbuh)) were fulfilled through the income of “fay”.

(Fazil Geelani).

so that Muslims will remember the relation that they have with the non-Muslims according to the Shariah and how important it is for them to uphold the treaty of peace and security made with the un-Islamic country.⁵⁹ After all why should anyone be afraid of undertaking business transactions which have been approved by Islam – the law, the government, the giver and the receiver all are satisfied.

Refusing “fay” is a crime against the community

The fact is that by not taking the earnings / wealth that is not only lawful, but in the words of Imam Abu Hanifah it is “tayyab” (pure), which I call “fay” or “phay” and which the Quran terms as pure and lawful - the remaining few Muslim Capitalists are committing a crime against the community. Who does not know that the huge capital worth lakhs of rupees kept in banks which belongs to Muslims is not only

⁵⁹ In the terminology of the Quran only that wealth is ‘fay’ which is obtained from a people at war with the Muslims without the use of force. Please read Surah Hashr (of the Quran). Everything in it pertains to the conditions of war. (The Jewish tribe of) Bani Nazeer was besieged. The situation of fighting and killing did not arise as they were humbled and they accepted being exiled. The wealth and property which came in the hands of Muslims was called “fay” How can this term be applied to the money earned through un-Islamic means such as interest, gambling and betting from the non-combatant non-Muslims in times of peace Then even if (it is accepted that) this is “fay” how can it be consumed individually by the members of the Muslim community. The Quranic injunction regarding the wealth earned through “fay” is that it should be deposited in the ‘baitul maal’ (central treasury of the Islamic government) and should then be spent on the general requirements of the Islamic state.

مَا أَنْعَمَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرْبَىٰ فَإِنَّهُ لِرَسُولٍ وَّلِيِّنِي وَالْمُشْكِنِي وَابْنِ الْكَوْتَلِ

What Allah has bestowed on His Messenger (and taken away) from the people of the townships,- belongs to Allah,- to His Messenger and to kindred and orphans, the needy and the wayfarer

(Surah Al Hashr : 7)

(Maududi)

strengthening the un-Islamic forces but also being wasted which could otherwise have been utilized for uplifting the Muslim community economically. In fact what is being said (by some is) that this "fay" belonging to Muslims is being used to pull away women and children from the ranks of Islam and convert them into other faiths.

Openly يُخْرِجُونَ الرِّسُولَ وَإِنَّكُمْ أَنْ تُؤْمِنُوا is being practiced.

Is this not open treachery to our community? ⁶⁰

What a tragedy that we are considering it to be lawful for Muslims to be slaughtered with the knife of Muslims. Is God not watching over us? Is the Prophet (pbuh) not being told about this? O people of the world! Look at the (silly) community of the Prophet Muhammad (pbuh). The people of the North, South, East and West are making merry after trapping the Muslims in the web of relinquishing interest. These non-Muslims are saying - O Muslims! Give up your claim on the legitimate interest you have earned and be ready to lose your fields, farms and your inheritance. If you take interest earned through your bank deposits then you will go against the Shariah and renounce the love of the Prophet (pbuh). What dirty tricks are being played out against this (poor Muslim) community? .

⁶⁰ Anticipating that the unused interest amount in the banks may add to the strength of the enemies of Islam – some of the cautious Islamic scholars have given this fatwa (verdict) that the interest from the banks should be taken and given away as charity to poor Muslims or should be utilized for their welfare schemes. This fatwa is most appropriate. In Islamic jurisprudence (*fiqh*) the issue of the wealth that you fear might be in danger of being snatched away (by non-Muslims), if that wealth had been obtained by mistake or that wealth was taken possession of because of some expediency – then it should be given away in charity. Thus it is not necessary that interest be declared as "fay" to avert the loss which Maulana (Geelani) is describing. (Maududi)

Interest from the Bank

The truth is that bank is another name for institutions that formally devour / (run on) interest. But when their (core) utility which validates them as an interest based organization, no longer holds true and from which Muslims have not been prohibited, then becoming part of this institution does not mean you hold membership thereof but it (the bank) is now like a company that gives loans to people on interest. What is the reason for Muslims to refuse this pure '*fay'*? What does that company do? Whom does it loan money to? From whom does it borrow? This is the bank's own business (in which we have no say) and are like modern day business contracts that have no relation with the bank transactions that Muslims undertake with the bank (as its customers). In fact according to the laws and regulations from the Islamic jurisprudence that we have seen so far – all the financial transactions with the bank are totally justified (and legal according to Islam).⁶¹

However I have already said before and say so again and will always continue saying that the people who do so (consider interest to be prohibited in India) are doing a great disservice to the nation. They are doing a grave injustice to

⁶¹ There is one more atrocious aspect of interest - that the banks utilize the sums of money that we keep with them in doing interest based transactions. And the people to whom the banks loan our deposits include both Muslims and non-Muslims. Thus the interest that we accrue from banks (by depositing money with them) does not come only from non-Muslims but also from Muslims. In other words we do not consume interest from Muslims directly but through the medium of banks. Maulana (Geelani) dismisses this objection by saying that the "harbi" (non-Muslim enemy combatant) banker has himself given some loan to a Muslim from the money that we deposited with him and then earned interest through that then it is as if we have forcibly acquired that money from the harbi (non-Muslim enemy combatant) (which is lawful and pure for us). Now the question remains that when the non-Muslim harbi (non-Muslim enemy combatant) slaughters Muslims with the weapons supplied by us and then shares some of their meat with us, then why should we supply him those weapons? Maulana (Geelani) has not paid attention to it. (Maududi)

their fellow countrymen, to the poor and to the labourers. But the defenders of the nation, the countrymen who have been handed over the defense of the country when they themselves consider interest to be a means for developing and modernizing the nation and even the citizens of the country feel the same, then should Muslims rebel against their own community by being loyal to the nation? ⁶²

Although for them it is totally prohibited to betray the community even if it may cost them the rights of their family and their nation. The Quran declares

لَنْ تَنْعَمُ كُمْ أَرْحَامُكُمْ وَلَا أَلَدُكُمْ يَوْمَ الْقِيَمَةِ يَفْصِلُ بَيْنَكُمْ وَاللَّهُ يَعْلَمُ
تَعْمَلُونَ بِصَيْرَتِكُمْ

"Of no profit to you will be your relatives and your children on the Day of Judgment: He will judge between you: for Allah sees well all that ye do"

(Surah Mumtahina :3)

It is true that we have been commanded to have patience and till a certain period of time patience is good for us but has not the Quran itself taught us "مجازاة بالمثل" along the law of patience?

وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا إِمْثُلْ مَا عَوْقَبْتُمْ بِهِ وَلِئِنْ صَبَرْتُمْ لَهُوَ خَيْرٌ لِلصَّابِرِينَ
"If ye punish, then punish with the like of that wherewith ye were afflicted. But if ye endure patiently, verily it is better for the patient.

(Surah Nahl :126)

⁶² This issue has absolutely no relation with loyalty to the nation and rebelling against the community. Muslims should refrain from interest because it has been declared to be absolutely unlawful (haram by Islam). If you remove this prohibition then you do not need any other proof or argument (to devour interest). Then Indian Muslims too will become ten times more adept than those who are experts in usury.
(Maududi)

But is there any final and upper limit for patience? Is there any threshold for steadfastness? The One who has taught patience has also taught ﴿لَا تَمْلأُ يَدِي مَنْ أَنْهَا﴾ *make not your own hands contribute to (your) destruction* (Surah Al Baqarah : 195)

Are the elite and the masses aware of the explanation of ﴿لَا تَمْلأُ يَدِي﴾ given by the conqueror of Europe - Abu Ayyub Ansari (.r) who lies buried below the walls of Istanbul (Constantinople).

Refusing “fay” is also a crime against the nation

People who reflect (on this issue) say that refusing to take this ‘fay’ is not only being unfaithful to your community but is also enmity to your nation. Is it true affection to merely regret about (and not take any action to save the lives of) those who are consuming poison? Or having the correct caring attitude means you must snatch the poison away from them? ⁶³

مَنْ رَأَىٰ مِنْكُمْ مُنْكِرًا فَلْيُغْرِهْ بِيَدِهِ وَإِنْ لَمْ يَسْتَطِعْ فِي سَبَابِهِ وَإِنْ لَمْ يَسْتَطِعْ قِيَالِهِ وَذَلِكَ أَضْعَافَ الْإِيمَانِ۔

If one of you sees something wrong, let him change it with his hand; if he cannot, then with his tongue; if he cannot, then with his heart and this is the weakest faith.

You learn (the above Hadith) in all the authentic books of the Hadith and yet do not have the courage to come out of your condition of weak faith. Please tell me what excuse can you give especially when you have the strength, the power of the government is with you, the fellow countrymen support you in this matter. The one who injures others can understand its pain only when he too is injured by others.⁶⁴

⁶³ Snatching the poison is definitely exhibiting care and affection, but then to consume that very poison yourself and to think that this poison is a remedy and medicine is neither being concerned nor being wise. (Maududi)

⁶⁴ The Hindus, Christians and Jews have been fighting amongst themselves and with others since many centuries. They have harmed others and have

If Muslims stop discharging this responsibility of forbidding evil and enjoining good, then people who take advantage of others will start exploiting the precarious condition of the poverty stricken masses and use it as a good opportunity to increase ones power and strength. "فَهُنَّ مِنْ مُّذَكَّرٍ" Then will anybody take admonition?

Maybe when others will realize the terrible pain and suffering that the Muslims are undergoing then the government itself will prohibit interest. If the government does bring about a law to prohibit interest then the first ones to follow and implement this law religiously will be Muslims. The Muslim community has been created for the completion of excellence in morals and ethics.

نحن أحق بمحاربة الأخلاق

"We Muslims are the first eligible community to follow the best and excellent laws."

We will be guilty of not following our religion if we rebel against the law of the land.

also been harmed but still not understood its symptoms. Then how can we expect that they will be alerted by a few mild slaps at the hands of Muslims and will refrain from committing this sin henceforth? Maulana (Geelani) is probably thinking that Muslims only give interest (by taking loans) and non-Muslims only take interest (by giving loans). He therefore thinks that once Muslims too start taking interest then the interest consuming non-Muslims will become afraid (of the competition offered by Muslims in the money lending business) and then the government of India will be frightened and ban the giving and taking of interest. However the reality is different. All non-Muslims both give and take interest. Muslims will not be able to teach them a lesson by starting to take interest. However, they will definitely learn a lesson themselves which might make them oblivious of the difference between 'phav' and non-phav. Then one should also remember that there are not many big Muslim capitalists, so even if they start (entering the business of) taking interest then the other non-Muslim money lenders will definitely not go out of business and they will definitely not unite and force the government to ban interest. (Maududi)

But if the government also does not listen to the Muslim demand to prohibit interest then Muslims will definitely be saddened to see others supporting the government in continuing to legalize interest. The fellow countrymen will thus ignore the sermonizing by Muslims to prohibit interest in the same way in which they have been making fun at the sermons and preaching (by Muslims) both verbal and in writing.⁶⁵

If they later on sign a covenant with Muslims to prohibit interest then has not it been permitted by Islam that:

لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِّنْ دِيَارِكُمْ أَنْ تَبْرُؤُوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ ⑧

Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those who are just. (Surah Mumtahina: 8)

The community that signs and ratifies such a covenant will be the one that has been raised to benefit the entire humanity. We will dislike these things with our heart, we will speak up vehemently, we will draw the attention of the government to this matter again and again, we will tell our countrymen, we will keep saying as we have said before, we will speak loudly and repeatedly. They may persist in whatever way possible to evict us from our homes and deport us from our country but we

⁶⁵ They will not stop laughing and in fact one day you will see them peel with laughter. They will say that finally it is now proved that Islam cannot be implemented (and is impractical) in the financial and economic domains and it is now clear that the prohibition of interest (in Islam) is something that is completely impractical in this world. Just as you criticize them for amending their religious laws related to divorce, inheritance etc, in the same way they can use and spread the idea that interest is the weak link in Islam (that its prohibition by Islam is problematic and impractical in the modern day world) and they can present your new attitude (of disregarding the prohibition of interest) as a visible example (of the unreasonable, unworkable and unrealistic nature of Islam). (Maududi)

will never diminish our goodwill and concern and we will go beyond words and act according to the divine commandment of forbidding evil and enjoining virtue⁶⁶ for which we (the Muslim community) have been raised so that our neighbours and fellow countrymen agree on its evils and the damages it (interest) inflicts. The deranged hearts will thus meet and definitely meet – InshaAllah (God willing).

The ruling of the Islamic governments and Islamic states

Before we close the discussion on the topic some things remain worth mentioning. Why should we leave them? When the Islamic laws and regulations are always there to support us and guide us then the question which arises is that – what is the ruling (regarding interest) in those Islamic countries which do not implement the Shariah due to various reasons. There the rulers and the citizens are Muslim. There is a verdict (fatwa) regarding this in Shaami that if the rulers have the power to implement the Shariah in their country and still do not do so, then that country would still remain *Dar al-Islam*. He says:

⁶⁶ This method (suggested by Maulana Geelani) of enjoining virtue and forbidding evil is very strange indeed. To first commit the evil from which we want to stop others is like a person who commits acts of arson and violence after consuming alcohol and then does not desist even after counseling then if we ourselves start consuming alcohol upon his insistence and then after committing acts of violence and arson we tell him – see this is what happens when you consume alcohol – so now either you sign a covenant with us that neither will you consume alcohol nor shall we – otherwise remember that we will commit more violence and arson by consuming more alcohol than you. With this kind of counseling the agreement to keep away from alcohol may definitely not be signed but one thing will definitely happen after seeing such a morally upright and virtuous person at the wine shop the wine seller is bound to exclaim – “ We welcome the Shaikh (religious and pious person) into the gang of drunkards”!
(Maududi)

وبهذا ظهر ان ما في الشام من جبل تميم الله المسمى بجبل الدروز و بعض البلاد التابعة له كلها دارالسلام لانها وان كانت بها حكم الدروز او نصارى ولهم قضاة على دينهم وبعضهم يعلنون بشتم الاسلام وال المسلمين لكنهم تحت حكم ولاة امورنا وببلاد الاسلام محيط ببلادهم من كل جانب واذاروا اول الامر تنفيذ احكامنا فيهم نفذوها.

(ص ٢٧٧-شامي ج ٣)

"And so we come to know that the area of Syria called the mountain Teem-Allah which is popularly known as Jebel-Druze (mountain of Druze) and the other city which is under its control is all Dar al-Islam although the Christian and Druze laws are in place there and the rulers and the judges are from that community and some of them openly use bad language and utter profanities against Islam and Muslims, but because they are under the overall control of and surrounded by the Islamic state and if the chief of the Muslims wants he can implement the Islamic laws in that area" (Shaami volume 3 page 277)

From this we can conclude that the Muslim rulers and kings who cannot implement Islamic Shariah inspite of their keen desire to do so in their countries cannot remain *Dar al-Islam*.⁶⁷ And Allah knows best.

⁶⁷ Probably Maulana (Geelani) wants to classify the Indian Muslims to be living in Dar-ul-Harb and their non-Muslim fellow citizens are 'harbi' (non-Muslim enemy combatants) whose wealth and property is lawful. For this Ijtehad (diligence – independent reasoning) there is no room in the Hanafi *fiqh* (jurisprudence).

Some explanation from derived and from (various other) fuqaha (experts in Islamic law / jurisprudence) are as follows:

In one of the footnotes of Dur al Mukhtar Lil Tahawi it is written that

لواجرت احكام المسلمين واحكام الشرك لا تكون دارالحرب

In Fatawa Bazazia it is mentioned

فاما وجدت الشرائط كلها صارت دار الحرب وعند تعارض الدلائل و الشرائط
يبقى مكان او يتراجع جانب الاسلام احتياطاً

and in Khazanatul Mufteen it is mentioned

Now as far as the question goes regarding how to organize the Eid and Friday prayers in such countries? It is mentioned in Shaami that:

كل مصريه وال مسلم من جهة الكفار يجوز منه اقامه الجمع والاعياد
واخذ الخراج وتقليد القضاة وتزويج الايمان ناقلاً عن جامع الفصولين. (ص ٢٧٧- ج ٣)

All those cities in which the non-Muslim leaders permit and allow Muslims to organize the Friday and Eid-prayers, where Muslims are allowed to collect taxes and even permitted to appoint their own judges with the permission of the rulers and also to conduct the wedding of the widows.

(vol.3 p.277)

However in an un-Islamic country where there is no Muslim leader that has been accepted by the un-Islamic government then the ruling for such a situation is:

واما في بلاد عليها ولاة كفار فيجوز للمسلمين اقامه الجمع والاعياد
ويصير القاضى قاضيا بتراسى المسلمين ويجب عليهم طلب وال
مسلم (صف ايضا)

However a country where the king is a non-Muslim, there too Muslims are permitted to establish the Eid and Friday prayers, appoint Muslim judges by mutual consultation

ان دارالاسلام لا تصير دار الحرب متى لم يبطل جميع ماصارت به دار الاسلام
فمابقى علقة من علاقه الاسلام يترجع جانب الاسلام.

After the above clarification who can say that the princely states of Hyderabad, Bhopal and Junagadh have become *Dar al-Harb* and their non-Muslim citizens are enemy combatants. Maulana (Geelani) may be knowing that in Islamic jurisprudence *Dar al-Harb* is another name for "*Dar al-Abahat*" where most of the restrictions of Islamic law are relaxed temporarily by necessity. If these temporary restrictions are given an ongoing and permanent status then it is not possible for a Muslim to live there as a Muslim. For example if the Islamic scholars had declared Hyderabad to be a *Dar al-Harb* and made it a Dar-al-Abahat after entering into a subsidiary alliance with Lord Dalhousie then within 136 years the Muslims of that province would have been so transformed and distorted that nobody from the Islamic world would have been able to identify them as Muslims.

(Maududi)

and it is also incumbent on them to keep searching for a Muslim leader (amongst themselves).

From this we also come to know that Islam - the complete way of life - has shown how a Qazi (Muslim judge who gives rulings and verdict according to the Islamic Shariah) can be appointed in a non-Muslim country and can give verdicts on the various problems and issues of Muslims.

فَلِلّٰهِ الْحَمْدُ فِي الْأَقْرٰنِ وَالْآخِرَةِ وَصَلَّى اللّٰهُ عَلٰى النّٰبِيِّ الْخَاتِمِ الرِّسُولَ وَعَلٰى
اللّٰهِ وَآصْنَافِهِ أَجْمَعِينَ وَأَخْرِدُّهُمْ بِالْحَمْدِ لِلّٰهِ رَبِّ الْعَالَمِينَ۔

After the publication of the above essay by Maulana Manazir Ahsan Geelani, some intellectuals had raised objections. The following is the reply that Maulana Geelani gave them:

Compilation

(1) There has definitely been a lot of deliberate overlook in interpreting the issue because of which there is a strong possibility of misunderstanding, which has been narrated thus – “interest does not remain interest in an un-Islamic government”. From this the meaning that is derived is that under Hanafi law, we are allowed such interest based transactions with every person whether Muslim or non-Muslim and their wealth becomes lawful and unprotected. Although this is not the intention (of the ruling) but it is meant only for those non-Muslims for example Jews, Christians, Majoosi and Hindus whose responsibility has not been taken by the Islamic government. I had reproduced the famous verdict (fatwa) of Imam Muhammad from Seer Kabeer as a proof of my argument and for further satisfaction I now also reproduce the following article from that law:

وَلَوْ كَانَتْ هَذِهِ الْمُعَاقَّلَةُ تِبْيَانَ الْمُسْلِمِينَ أَوْ اسْيَرِينَ فِي دَارِ الْحَرْبِ
كَانَ بِاطْلَالٍ مَرْدُودًا لَا نَهْمًا يَلْتَزِمُونَ أَخْكَامَ الْإِنْسَلَامِ فِي كُلِّ مَكَانٍ۔
(سيير كبار ج ۲۶ ص ۲۲۶)

*"And if this matter occurs between two Muslims who are residing in Dar al-Harb by signing a treaty of peace and security with the non-Muslims or the two Muslims are prisoners of war (captured by non-Muslims) then it will be dismissed and rejected because they both fall under the Islamic ruling at all places"*⁶⁸ (vol.3 p.226)

For the prisoner or captive it is not necessary according to Islamic jurisprudence that he should be housed in jail. In fact every person who cannot enter another country without permission or without passport is a prisoner.⁶⁹

⁶⁸ From this we can only conclude that two citizens belonging to an Islamic country cannot take interest from each other even when they both reside in an un-Islamic country. But if a Muslim from *Dar al-Islam* enters a *Dar al-Harb* by signing a treaty of peace and security then he can take interest from a Muslim citizen of the *Dar al-Harb* because according to Hanafi law the wealth of that Muslim too is lawful and non-protected like that of the non-Muslim combatant. It is mentioned in *Bahr al Raiq* Volume 6 page 147 that:

وَحْكَمَ مِنْ أَسْلَمَ فِي دَارِ الْعَرَبِ وَلَمْ يَهَاجِرْ كَالْعُرَبِيِّ عِنْدَ أَبِي حَنِيفَةَ لَأَنَّ مَالَهُ غَيْرُ

مُخْتَومٌ عَنْهُ فَيُجُوزُ لِلْمُسْلِمِ الرِّبَا مَعَهُ (جَلْد٢ ص ١٣٧)

Thus according to the interpretation of Maulana (Geelani) if India is considered *Dar al-Harb* then it would be lawful for Muslim moneylenders (from across India) to take interest from not only Hindus but also Muslims. Not only that they can also do gambling and even sell unlawful things to Muslims of India. (Kamafi al Fatah volume 5 page 300) (Maududi)

⁶⁹ If this is the only definition of a captive then all the Indian Muslims will not be citizens living under an agreement of peace and security with non-Muslims but will qualify to be captives and prisoners. The laws pertaining to a captive are totally different from that of a resident / citizen. The prisoner of war need not follow the law of the land. He has the right to rob, kill and bribe. In *Bahr al Raiq* it is mentioned in volume 5 page 107:

لَأَنَّ الْأَسْيَرَ يَبْاخُ لِهِ التَّعْرُضَ وَإِنْ اطْلَقُوهُ طَوْعًا لَأَنَّهُ غَيْرُ مُسْتَأْمِنٍ فَهُوَ كَالْتَّلَصِصِ

فَيُجُوزُ لَهُ اخْذُ الْمَالِ وَقْتَلُ النَّفْسِ دُونَ اسْتِبَاحَةِ الْفَرْجِ (ج ٥ ص ١٠٧)

If we ignore the spirit or objective of the law and focus on its words then there are even more possibilities of freedom. (Maududi)

والتفصيل ان شاء الله في وقت آخر

(2) The second thing that I want to acknowledge is that yes I published this article in a hurry without seeking (the necessary) advice. I accept my mistake as a humble servant of God. But God the All Knowing the All Hearing knows the emotions and the fear under which I wrote the article. Other than this there are two arguments on which the basis of this issue / problem has been presented. First is that India is *Dar al-Kufr* and the second that in *Dar al-Kufr* it is lawful to take the unprotected wealth by way of عقود فاسدة في الاسلام by way of contracts that are designated as invalid in Islam.

In my previous argument I found most of the Islamic scholars and the pious intellectuals to have a consensus on this issue. However on the other argument I did not seek advice in great detail from the highly respected Islamic scholars which you have noted and most of whom are my teachers or my teachers in principle.

I only knew about the opinion of Maulana Ashraf Ali Sahab Thanwi (.r) that he was not satisfied with the judgment of the Hanafi jurisprudence on this issue of interest. In his fatwas (verdicts) and his Tafsir (explanation of the Quran) he has narrated Hadith and principles of *fiqh* which support the second argument (that in *Dar al-Kufr* it is lawful to take the unprotected wealth / *fay* / interest).

But as far as I could study and research the topic I found the school of thought of Imam Abu Hanifah to be one of the best in capturing the spirit of the Quran and the Sunnah of the Prophet (pbuh). Imam Abu Hanifah has understood that just as the commandment of لَا تُشْرِكُوا بِّاللَّهِ مَا لَمْ يَكُنْ “do not kill your own self” is obviously only meant for Muslims otherwise the law of jihad (to struggle in the way of Allah) has no meaning just as the commandment saying لَا تَنْكِحُوا أَمْوَالَكُمْ بِإِنْتَكُمْ بِالظَّاطِلِ “ do not devour the wealth you earn through unlawful means”.

And similarly even the command of لَا تَأْكُلُوا الرِّبَوْ "do not devour interest" apparently seems specific to only Muslims⁷⁰

⁷⁰ With this statement of Maulana (Geelani) it is appearing that the sanctity of blood, the difference in your earnings to be lawful or prohibited and the prohibition of interest is all between Muslims themselves. It also seems that outside the pale of Islam the non-Muslims have no significance and there is no difference in the business dealings with them as being lawful or unlawful. What can be further away from the truth and a greater and complete misrepresentation of Islamic law? In the Quran it is said that:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَمَ اللَّهُ إِلَّا بِالْحَقِّ

By the spirit of this verse every life is intrinsically sacred and inviolable (be it Muslim or non-Muslim). It can only be taken if the "Truth" is implemented. In jihad this unlawful and inviolable thing (life of a person) becomes lawful just as in "qisas" (legal retaliation) the inviolable blood of a Muslim becomes lawful and violable.

If Islam has declared the non-protected non-Muslim to be 'harbi' (non-Muslim enemy combatant) on the basis of certain principles then it does not mean that every Muslim without the express sanction of the chief (Amir) and the Jamaat (community) starts enforcing the 'Truth' on the non-protected non-Muslims and starts killing them and loots them wherever he finds them. If such a thing happens then what difference would there be between a Muslim and an anarchist? In the same way the methods of earning and spending money which Islam has declared to be unlawful will continue to be unlawful under all circumstances. It cannot be that a particular method of earning money from Muslims that is unlawful becomes lawful if the money earned is from non-Muslims.

وَلَا تَأْكُلُوا أَمْوَالَ الْكُفَّارِ بِإِيمَانِكُمْ بِالْبَاطِلِ وَتُنْهَى إِبَاهَا إِلَى الْحُكَّامِ لِيَأْكُلُوا قَرِيبًا مِّنْ أَمْوَالِ الظَّالِمِينَ
بِالْأَمْمَةِ إِذَا كُنْتُمْ تَعْلَمُونَ

And

أَعْلَمُ اللَّهُ أَبْيَعُ وَحَرَمَ الرِّبُو

And

إِنَّمَا الْخَنْزِيرَ وَالْمَنِيْرَ وَالْأَرْلَامَ رِجْسٌ مِّنْ عَكْلِ الشَّيْطَنِ

Can any of the above mentioned laws pertaining to the prohibition of the ways of earning be restricted only to exist between Muslims? What would happen if the Muslim creed were to declare alcohol to be unlawful but decide that to sell it to non-Muslims is permitted. If Muslims term gambling to be prohibited but play hard with other communities, assert pork to be

...Contd. On next page

especially when the law -**اموال مجرمہ**- related to the prohibition of the wealth of the enemy combatant has the assertion of "بِنَكُمْ" then it becomes even more specific and applicable only to interest as law of murder / killing is applied to all.

It is true that the law of interest (punishment and warning to those who devour interest) is very strict but is it more strict than the law of killing? Quran has declared the unlawful killing of one human as the killing of the entire mankind and which will be punished with the Hell-fire. The culprits have been threatened with this punishment for eternity. But who does not know that a particular aspect of this law (which Imam Abu Hanifah (.r) thinks is regarding wealth and money) has also been termed as a great virtue and righteousness. After all what could Imam Abu Hanifah (.r) do? In the Quran it is mentioned:

وَعَدَ اللَّهُ مَعَلَّمٌ كَثِيرٌ أَنَّا خَلَقْنَاكُمْ

"Allah promises you with the wealth of war booty which you have...."

Does this mean that the Muslims will purchase this war booty? Or they will inherit it? Or someone will gift it to them? Then the wealth acquired with and without force the clarification regarding it is:

unlawful but sell it those who consume it, sermonize about the impermissibility of interest and consider interest based transactions with non-Muslims to be pure and lawful – then the religion of Islam will God forbid become a laughing stock amongst people. And no sane person will then be ready to accept Islam. It is regrettable that Maulana (Geelani) is crediting this incorrect interpretation to Imam Abu Hanifah (.r). Although he had suggested it as an exception to the general rule and that too under certain requirements and conditions of war and for people who are engaged in combat. It certainly does not mean that the entire population of Muslims should permanently remove all restrictions of the lawful and the prohibited in matters of business and financial transactions with non-Muslims and continue with this unlawful means of income for generations together. (Maududi)

وَمَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْهُمْ فَمَا أَوْجَحْتُمْ عَلَيْهِ مِنْ خَيْلٍ وَلَا رِكَابٍ وَلَكُنْ
اللَّهُ يُسْلِطُ رُسْلَةَ عَلَى مَنْ يَشَاءُ

And that which Allah gave as spoil unto His messenger from them, ye urged not any horse or riding-camel for the sake thereof, but Allah giveth His messenger lordship over whom He will. (Surah Hashr :6)

This was not promised in times of war only but as all of us know:

وَإِذْ يَعْنِي كُمُ اللَّهُ إِخْرَى الظَّالِمِينَ أَهْلَكَكُمْ

And when Allah promised you one of the two bands (of the enemy) that it should be yours (Surah Anfal :7)

Again we all know which was the other band (of the enemy) promised by Allah? It was the non-combatant trade caravan!

أَهْلَكَكُمْ “that it should be yours”. On what basis were the mutual trade agreements, sales, business, gifts, inheritance, offerings and charity promised to Muslims?⁷¹

If this way is declared as the means of income for Muslims then will that method be unlawful and be categorized under the wealth specified by the Quran as لاتأكلوا اموالكم ينكم بالباطل. It is recorded in Bukhari (one of the most authentic Hadith collections) that when the Noble Companion Abu Baseer (.r) did not get permission to live in Medina according to the conditions stipulated in the treaty of Hudaibiya, he established

⁷¹ This was a trade caravan belonging to a people (the Quraish of Arabia) who were at war with the Muslims. Yes although it was not directly a combatant force, it is perfectly legitimate in the law of war to struggle for war booty, to capture their trade caravans and ships and to acquire their wealth and assets. Let Maulana (Geelani) produce a single example from the era of Prophet Muhammad (pbuh) in which besides the condition of war (during times of peace) the blood money and wealth of the non-protected non-Muslims was considered to be lawful and legitimately acquired and Muslims were given the individual freedom to rob and loot the non-Muslims wherever they find them. (Maududi)

himself along with a few companions along the sea coast. And what was his occupation (from then on)? It is mentioned by Imam Bukhari that:

فَوَاللَّهِ مَا يَسْمَعُونَ بِعَيْنِ حَرَجَتْ لِقْرِنْشِي إِلَى الشَّامِ إِلَّا اغْتَرَضُوا
لَهَا فَقَاتُلُوهُمْ وَأَخْنُوا أَمْوَالَهُمْ

"By God! Whichever trade caravan belonging to the Quraish that he (Abu Baseer) would come to know as travelling to Syria, he would attack it, kill those leading it and snatch the wealth and belongings of the caravan."

Is there any more emphasis and assertion required? ⁷²

Quran promised only "عِير" (the trade caravan) but this is something which was already an event and has already taken place. وَوْقَع. Is this from the Hanafi law or it is the demand of the plain and obvious demand of the Quran? It is strange that the law of war booty under which Imam Abu Hanifah created these by-laws or articles is held applicable only for Muslims. Still people keep saying that if the earnings through business with non-Muslims were lawful then why would Allah have commanded in the Quran regarding the Jews that:

وَأَخِذُوهُمْ بِالرِّبَا وَقَدْنَهُوا عَنْهُ وَأَكْلُوهُمْ أَمْوَالَ النَّاسِ بِالْبَاطِلِ

"And because of the practice of interest by the Jews for which they were prohibited and from devouring the wealth of people by unlawful and unjust means"

(Surah Nisa: 161)

When war booty itself was unlawful for the Jews then on what basis would interest be lawful for them? And then that

⁷² For Jews the war booty may or may not be lawful but there is no doubt that 'fay' is lawful for them. Quran testifies that Allah promised to give them a whole country. Obviously all these wealth and property is 'fay' for them otherwise how is the occupation of the Jews on the promised land legal and permitted? It was definitely not business, gift, charity and contribution? (Maududi)

too can only be said when it is proved that they would do business with it only with the non-Jews.⁷³

Maulana Shibli has often reproduced the Hadith from Abu Dawood in his Seerat (Biography of the Prophet (pbuh)). This should not cause any misunderstanding because the basis for this insistence is the issue of “*ghalool*” (which means misappropriating the war booty before its official distribution) as Hazrat Sumra bin Jundab (.ra) explained this in the battle of ‘Kabil’. Abu Lubaid narrated that “we were with Hazrat Sumra at Kabil; people started looting the war booty once it came in their hands. Seeing this Hazrat Sumra (.ra) stood up to begin a sermon and said that “I heard the Prophet (pbuh) prohibiting us from “نھی ” “nahba” (acquiring the war booty before distribution)”. People returned all the war booty. Then he (Hazrat Sumra (.ra)) distributed the war booty according to the regulations of the Shariah” (Majmua al Fawayad). It does not mean that he returned back the war booty to the original owners but he prohibited them committing from “*ghulool*” (looting the war booty before the official distribution).

When was this ruling regarding interest revealed? This is something else.

“لَا تَأْكُلُوا الرِّبُو أَضْعَافًا مُضَاعِفَةً” this command in the Quran of prohibiting interest has been revealed much earlier. But like the prohibition of alcohol it can be termed as non-absolute. But Muslims had begun implementation on the supplementary command of the prohibition of interest from 7 Hijri (year of migration). It is mentioned in the Muwatta of Imam Malik that in the Battle of Khyber the Prophet (pbuh) said regarding the sale of a silver utensil that “أَرَيْتُمَا فَرَدُوا ” you both have done a usurious transaction”. They then returned the utensil.

⁷³ Why do we need to prove it? In the Quran the concerned wealth has been termed as public money. In the rule that you have declared when it is not اموالهم بينهم then it can only imply that he would take interest from both the Jews and non-Jews in the same way as we do so today.

From this we can deduce that in *Dar al-Islam* this law had already been enforced from 7 Hijri (year of migration). But when was it implemented all over Arabia? All of us know that the ربا في الجاهلية (interest at the time of Ignorance) was prohibited by the Prophet (pbuh) not at the time of Victory at Mecca but at the time of Hajjatul Wida (the Farewell Hajj). From this can we not deduce that wherever the Islamic rule is not established there the situation cannot be the same as where Islam is in (political) power⁷⁴. Otherwise at least the interest of Hazrat Abbas (.ra) who had become Muslim much before the Farewell Pilgrimage should have been invalidated before 7 Hijri and not at the time of Farewell Pilgrimage.⁷⁵

What is surprising is that some highly respected scholars suspected the Hadith of the Farewell Pilgrimage because if interest (based transactions) was permitted with non-Muslims

⁷⁴ From this it can only be proved that Muslims can enforce the general application of the prohibition of interest based transactions on a country only when they gain power over it and have the means to enforce their laws over the non-Muslims. Any sensible person can understand that giving commands to enforce laws before you acquire power is something inappropriate. How can you expect this from the Prophet (pbuh) to give commands for the prohibition of “-al-jahiliya” (interest from days prior to onset of Islam) while the ones who gave and took interest had not come under his authority? However he had prohibited the people who had come under his authority from giving and taking interest before the Arabian peninsula becomes purified of usurious transactions (Maududi)

⁷⁵ Regarding Hazrat Abbas (.ra) we know that he went back to Mecca after accepting Islam. And the Prophet (pbuh) did not know anything about the usurious transactions that he was doing there in Mecca. (Reference Book of Mabsoot al Imam al Surkhi Volume 14 page 57). We cannot say with certainty when the Prophet (pbuh) came to know about this. However when the Prophet (pbuh) at the time of the Farewell Pilgrimage gave the command for the complete and universal prohibition of interest then along with all others the balance usurious credit amount that people owed Hazrat Abbas was also cancelled. This incident is not at all proved that the Prophet (pbuh) had legalized the usurious trade of Hazrat Abbas (.r). (Maududi)

then why did the Islamic Shariah cancel the balance amount (of interest) that had to be taken from debtors.

Had the problem been of a usurious contract by itself making the person deserving of interest as the one who devours interest (making him a culprit) then one could have raised the objection that this is a mockery of the cancellation of one's established rights. But the issue is not one's right to earn interest as the question of legitimacy of earning interest itself still remains. When the country will become Islamic then the unprotected will become protected and inviolable. Then how could these protected (subjects) be declared to have become unprotected and violable?⁷⁶

And this is the reason when the people of Najran accepted the authority of the Islamic government, they were commanded

⁷⁶ This interpretation of the Quran is not correct. What is the relation between this problem and the issue of legitimacy? The Quran only says that

قُنْ جَاهَةً مَوْعِظَةً وَنَرِيهِ فَإِذْنَنِي كُلَّهُ مَا سَأَلَكَ

"The one who stops devouring interest after accepting the commands of Allah, for him the interest that he has devoured earlier is forgiven. Now it will not be restored back to him."

وَكَذُورًا يَتَّمِي مِنَ الْبَوْبِ
"and give up the interest that you have to claim from people"

قَاتِلُهُ تَفَعَّلُوا فَأَذْنُوا بِخَزْبٍ وَنَالُوا وَرَسُولِهِ

"if you do not follow this command then prepare for war with Allah and His Prophet (pbuh)..."

This was entirely based on reasons of wisdom and practicability and every government that implements the law of prohibition in any matter does it in this way. If the command had been given to return back the interest that was taken before the law was enforced then there would have been an unending list of disputes and litigations which could never have come to an end. And if permission had been given to recover back the interest that was due from the debtors after the law was enforced then the law would have lost its significance and become ineffective. God knows till when the process of recovery of the back dated interest would have continued. Hence a correct interpretation (of the Quranic verse) would be that all the interest amount and related transactions were cancelled in one stroke (Maududi)

that they should stop their usurious transactions. That is because once they came under the authority of the Islamic government their wealth and property became protected. People ask if any special reference can be found in the lives of the Noble Companions of the Prophet (pbuh) through which we will come to know if they had done any usurious transaction with any non-Muslim. In reply to this query Imam Muhammad has presented the dealings of Hazrat Abbas (.ra) in "*Seer Kabeer*". He says that Hazrat Abbas (.ra) would travel from Medina to Mecca before the Conquest of Mecca and at that time Mecca was not under *Dar al-Islam*.⁷⁷

In the same way through the Hadith it is proved though not interest but Abu Bakr Siddiq (.ra) did a transaction based on wager. He earned some money after the Battle of Badr through that transaction. It is very difficult to say that this transaction⁷⁸

⁷⁷ Even if we assume that Hazrat Abbas (.ra) was doing this business based on interest with the permission of the Prophet (pbuh) still it is a fact that before the conquest of Mecca all the tribes of Mecca and its surrounding areas were at war with the Muslims. After the conquest of Mecca although Mecca came under the authority of the Islamic rule but still in the surrounding areas inhabited by the non-Muslims were still at war. This example can only prove that under war conditions there can be some business transaction with people from the enemy camp based on *fasid* (invalid) contracts. (Maududi)

⁷⁸ What does this transaction imply? It has two parts. One is to wager. The other is to extract the money won from the wager. The first part definitely happened before the command of prohibition of gambling and alcohol was revealed. As that event (of Abu Bakr (.ra) undertaking the wager transaction) took place 6 to 7 years before the Hijrat (Migration) and the command of prohibition of gambling and alcohol was revealed after the Hijrat (Migration). As far as the second part is concerned which is to take possession of the camels that were placed as part of the wager, then it took place after the Battle of Badar. Most probably it happened after the command of prohibition of betting and gambling. But what is the answer to the question that the Prophet (pbuh) did not permit Abu Bakr (.ra) to keep the camels with him but told him to give them in charity. (Maududi)

took place before the command of prohibition of gambling and alcohol was revealed. Obviously Persia was defeated by Rome around the time in which the Quraish were defeated by the Muslims. The other party in this transaction along with Hazrat Abu Bakr Siddiq (ra) was Ummayah bin Khalaf who was killed in the Battle of Badar. The wager was of 100 camels. Hazrat Abu Bakr (ra) claimed these camels from the sons of Ummayah and that claim was on the wealth that is protected. He received the 100 camels. He brought them to Medina. It is correct that we do not know for sure that how many years after the Battle of Badar these camels were obtained? But we can guess that the defeated, dejected and angry Quraish may definitely not have wanted to deliver justice and give 100 camels to Abu Bakr (ra) not from the one who placed the bet but from his descendants.

In fact it is very clear that this event if at all might have taken place (that is of returning the camels) then it took place after the Treaty of Hudaibiya. And it is well established that the prohibition of alcohol and gambling was revealed around the time of the Battle of Uhud. This is established by a narration in Bukhari (one of the most authentic Hadith collections). By all probability the event of returning of camels took place after the prohibition (of gambling). If anybody wants to investigate these events according to history then they may corroborate my statement with the biography of the Prophet (pbuh) written by the late Maulana Shibli Nomani. Especially those who are not acquainted with Arabic. Anyways if there is no saying or action of the Sahaba (Noble Companions of the Prophet (pbuh)) then will not the saying / deed of the Prophet (pbuh) be more weighty (worthy of consideration) than the action of the Noble Companions and in fact even more weighty will be the legal opinion that is narrated by Imam Abu Hanifah (.r) himself. Imam Shafai has narrated through Qazi Abu Yusuf from Imam Abu Hanifah (r.) that:

عَنْ مَكْحُولٍ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يُرِيَنَّ الْمُسْلِمُ
وَالْأَخْرَى - (كتاب الامام للشافعى)

"It is narrated by Makhoor that the Prophet (pbuh) said that there is no interest between the 'harbi' (non-Muslim enemy combatant) and a Muslim."

I accept that this Hadith is mursal but are the ones who search for a saying of the Noble Companions not satisfied with a mursal Hadith? It is a strange thing that people accept and honour the saying of a Companion narrated by Asaba or Ibn Sa'ad but if Imam Abu Hanifah (.r) presents a marfoo mursal qauli Hadith the authenticity about which he himself is satisfied then people want to ignore it only by terming it to be mursal. It is also being said that we cannot declare a specific thing to be lawful or unlawful on the basis of a Hadith with a single narration but then can that Hadith not even support the permissibility or prohibition? Is this Hadith not even equal to the saying of the Noble Companions? Obviously after this detailed explanation this issue does not remain confined merely to the Hanafi law. Anyways, I could have provided even more details but its time has not yet come. I am waiting for the people who want to dilute and weaken the fatwa (verdict) of Imam Abu Hanifah (.ra) in this matter.

Along with this Shah Abdul Aziz Sahab also has very specifically given verdict in its favour numerous times. If there is an argument or dispute regarding his (Shah Abdul Aziz) verdicts then can there be anybody else in India who can guarantee the authenticity of the Hadith. The newspaper "al Jamiyat" belonging to "Jamaat e Ulema" have also published this fatwa (verdict). The Mufti of Dar-ul Uloom Deoband had also given a fatwa that taking a loan from the bank for whatever reason is permitted and lawful. Who can give a fatwa about earning in an (haram) unlawful way and then giving that in charity? As far as I think the Mufti had grasped the magnitude of the problem (before he delivered the fatwa). Otherwise at least I am humbled and amazed at the depth of

understanding of his fatwa. The late Maulana Abdul Ha'i Sahab has also given a fatwa although not declaring about India but in the context of *Dar al-Kufr* he has permitted interest permanently as a matter of expediency. The scholars of Barelvi and Badaun also do not disagree with it as far as my knowledge goes.

Inspite of all this, his subject matter has not acquired the colour of a fatwa / verdict but after explaining the matter, rather he has put forth a query. He has asked the scholars: has not the time has come in India for the implementation of this issue?

But if you really ask me personally then only because of this doubt I was reluctant to reproduce the fatwa as Maulana Abdul Ha'i has opined. Then what should I say? I do not know which frustration prompted me to lose my patience? Muslims have been burnt, looted and destroyed and this carnage continues to be inflicted on them.⁷⁹ I lost my cool on seeing their condition. There was no other way in front of me.

I was looking at ways in which we could defend (ourselves) or attack (our opponents) financially. The reason I termed it as 'fay' because in Shaami there was an indication to the effect that:

وَمَا يُؤخَذُ مِنْهُمْ بِلَا حَزْبٍ وَلَا قَهْرٍ كَالْهَدْنَةٍ وَالصَّلْحٍ فَهُوَ لَا غَيْرِهِ وَلَا
وَخَمْهٌ حُكْمُ الْفَنِ - (ص: ٢٥ ج: ٢)

"and whatever is taken from them without war and
bloodshed, for example the money pledged during a treaty,
then it is neither war booty (ghanimah) nor is it 'fay'.
However the law applicable to it would be that of 'fay'."

(vol.3 p.250)

Thus the command that is implied in *fay* then there should be no problem if it is legally termed *fay*. And if we are

⁷⁹ Maulana (Geelani) has himself elaborated this statement later.
(Maududi)

permitted to say so then may I ask if we can give a verdict of prohibiting marriage (*nikah*) fearing adultery? Did the Muslims fight each other because of the law of killing? Is there such a danger? However after the decline of Muslim political power I definitely dread the danger of those Maulvis (scholars) who give fatwas of ‘takfeer’ (excommunication from the Muslim community as an unbeliever or an apostate) on little issues and petty matters and are declaring marriages to be invalid and the children, born of wedlock to be illegitimate.

Thus in this situation it is entirely possible that each Muslim will take out a fatwa of declaring the other Muslim as an unbeliever. This is a serious sin which entitles one for punishment in the Hellfire. Alas, had the scholars refrained from these treacherous ways and tried to give a practical shape to this fatwa. Otherwise every person is responsible for his own intentions.

لِكُلِّ امْرٍ مَا تَوَلَّ فَمَنْ كَانَتْ مِجْرِيَةً إِلَى اللَّهِ وَرَسُولِهِ وَمَنْ كَانَتْ مِجْرِيَةً
إِلَى دُنْيَا يَصِيبُهَا وَامْرَأَةٌ يَنْكِحُهَا فَهِيَ مِجْرِيَةٌ إِلَى مَا هَا جَرَى إِلَيْهَا۔ (بخاری)

“and everyone will get what was intended. Whoever migrates with an intention for Allah and His messenger, the migration will be for the sake of Allah and his Messenger. And whoever migrates for worldly gain or to marry a woman, then his migration will be for the sake of whatever he migrated for.” (Bukhari)

That way even the ‘namaz’ (5 times daily prayer) can become a source for Hellfire if fatwas are given and people slaughter each other. Then will the fatwa of prohibiting the law of jihad be correct?

There is one more doubt that – Muslims can be found, not in savings banks but in general banks and cooperative banks. What to do in such a situation? It is true that generally the operating staff of the banks is non-Muslim. But when Muslims start entering banks as their owners then how should we act? What have the jurists written regarding the issue of the legal

injunctions in a monarchy? I do not have any other motive. I have to alert the scholars only about one issue. Either they raise their voice for the abolition of interest as the society that had done for the prohibition of alcohol or at least do something (permit the give and take of interest) by remaining within the confines of Islamic law as the other non-Muslims are doing. Maybe the government will pay heed. Maybe the countrymen will have some mercy. Maybe the settlement of interest can be achieved with the sacrifice of a cow. Or else the Muslim Capitalists must be brought together on a common platform and they should be convinced to do with others what people of the other faiths do with economically backward Muslims.

فَإِنْ اعْتَدُوا عَلَيْهِ مِثْلُ مَا اعْتَدُوا عَلَيْكُمْ

"If then any one transgresses the prohibition against you, transgress ye likewise against him"

(Surah Al Baqarah: 194)

This (as expounded in the above Quranic verse) is the only objective otherwise the people who are concerned about finding ways out of this problem because of the lust to fill their own bellies or more and more wealth are getting so wild in their eagerness that they are exerting all their efforts in misinterpreting a self explanatory command of the Quran in whatever way possible.

They should know that the foundations of Islam do not rest on power or wealth but the Prophet (pbuh) has established the foundations of this religion. The heights of glory can only be achieved with Iman (faith). وَأَنْتُمُ الْأَغْلَقُونَ إِنْ كُنْتُمْ مُّؤْمِنِينَ ﴿١٩﴾ and it is conditional in the sense that Muslims can achieve greatness only if they have Iman. There were always people who had a lot of wealth just as there are today. That time too the Quranic guidance was:

فَلَا تُخْجِبَكَ أَمْوَالُهُمْ وَلَا أَوْلَادُهُمْ إِنَّمَا يُرِيدُ اللَّهُ لِيُعَذِّبَ بَعْدَمْ يَهْبَطُ إِلَيْهَا فِي الْحَيَاةِ

الْأُذْنِيَّا وَتَزَهَّقَ أَنْفُسُهُمْ وَهُمْ كُفَّارُونَ ﴿٢٠﴾

Let not their wealth nor their (following in) sons dazzle thee: in reality Allah's plan is to punish them with these things in this life, and that their souls may perish in their (very) denial of Allah. (Surah At-taubah:55)

Muslims can gain strength today too with the help of this verse. Even our beloved Prophet (pbuh) was commanded by Allah:

لَا تَمْدَدِّعْ عَيْنَيْكَ إِلَى مَا مَتَعَنَّا بِهِ أَرْوَاجُوا هُنْمٌ وَلَا تَعْزَزْ عَلَيْهِمْ وَأَخْفِضْ
جَنَاحَكَ لِلْمُؤْمِنِينَ ﴿٨٨﴾

Strain not thine eyes. (wistfully) at what We have bestowed on certain classes of them, nor grieve over them: but lower thy wing (in gentleness) to the believers. (Surah Al Hijr:88)

Today those who are impressed with the material progress of Europe and bemoan our lack of development and advancement should be told about this Hadith from Bukhari in which the Prophet (pbuh) foretold about the Ummah (Muslim community) :

فَوَاللَّهِ مَا أَخْشَى عَلَيْكُمُ الْفَقْرَ وَلَكِنَّ أَخْشَى أَنْ تَبْسُطَ عَلَيْكُمُ الدُّنْيَا
كَمَا بَسَطْتَ عَلَى مَنْ كَانَ قَبْلَكُمْ فَتَنَافَسُوكُمَا كَمَا تَنَافَسُوهَا وَتَلْهِيْنُكُمْ
كَمَا أَلْهَيْتُهُمْ - (بخاري)

"By Allah I don't fear for you poverty, but I fear that the world would be abundant for you as it has been for those before you, so you compete for it as they have competed for it, so it destroys you as it has destroyed them." (Bukhari)

You say that Muslims do not have money, do not have any skills and talent, do not have good jackets and clothes but people do you even know what the Prophet (pbuh) had said in a Hadith in Bukhari:

تَعِسَّ عَبْدُ الدِّينَارِ وَعَبْدُ الدِّرْهَمِ وَالْقَطِيفَةِ وَالْخَمِيسَةِ .

The Prophet said, "Let the slave of Dinar and Dirham of Quantify and Khamisa (i.e. money and luxurious clothes) perish for he is pleased if these things are given to him, and if not, he is displeased" (Bukhari)

You say that a poverty stricken community is destroyed but the Prophet (pbuh) said: that the slaves of money will be destroyed.

Now you only decide; we Muslims must listen to whom? And it is true that the community that bemoans of poverty when they devoured interest and that too in huge quantity, then within 13 years 2,222 (two thousand two hundred and twenty two) rupees were converted to 2,222,00,000 (222 million) rupees. But is there any dearth of their sad tales of poverty? Do the people of only that community get two square meals a day which is adept and expert in interest? Which nation has an income of 3 paise per person? And if we leave them aside, then those who are devouring interest with the help of their governments - what is the condition of their labour? Do we not read about their plight in the newspapers? The guide of the Ummah Prophet Muhammad (pbuh) proclaimed the Truth when he said:

لَوْكَانَ لِابْنِ أَدَمَ وَادِيَانِ مِنْ مَالٍ لَا تَبْغُى تَالِثًا وَلَا يَمْلَأُ جَوْفَ ابْنِ أَدَمَ
(وفي رواية) عَيْنَ ابْنِ أَدَمَ لِدَ التَّرَابِ۔ (بخاري)

"If the son of Adam had money equal to a valley, then he will wish for another similar to it, for nothing can satisfy the eye of Adam's son except dust" (Bukhari)

Finally let me present this Persian couplet which means

سرمنزل قناعت نتوان زدست داون
اے سار بال فروکش کیں رہ کر آنندارو

"For a Muslim that song is sufficient that was sung more than 1300 years ago!"

اللَّهُمَّ لَا يَعِيشَ إِلَّا عَيْشُ الْآخِرَةِ

Tarjumanul Quran
(Shabaan 55 AH till Ramzan 55 AH)
November – December 1936

CRITIQUE

(Abul A'la Maududi)

I have expressed myself briefly in the footnotes on issues of disagreement with Maulana Manazir Ahsan Geelani Sahab. But to shed complete light on the fundamental issues which form the basis of Maulana's argument, mere footnotes will not suffice. Hence I now present a detailed critique.

Maulana Geelani's argument is based on the following points.

The summary of the evidence furnished by Maulana Manazir Ahsan Geelani

1. He claims that not only the injunctions prohibiting interest, but even the injunctions forbidding all the *fasid* (invalid) contracts and also the various prohibited means of income only apply to those transactions that are carried out between Muslims. In other words, there is no distinction between the lawful and unlawful and between the legitimate and the prohibited when carrying out transactions with non-Muslims.
2. In his opinion, the Shariah has legalized the blood and wealth of the non-Muslims who are *non-dhimmis* (non-Muslim subjects living in a state governed by the Shariah but who are not under its formal protection). Hence taking the wealth of such *non-dhimmis* (who are not under the protection of the Islamic government) in whatever possible way is legitimate even if be interest, gambling or the selling of alcohol, pork and carrion or any other means of income which Islam has declared unlawful for Muslims. Hence for Muslims acquiring the wealth of such *non-dhimmis* will be equivalent to acquiring *ghanimah* (the

wealth taken by force from an enemy in times of war) and it would be perfectly lawful and pure for them.

3. In his opinion, every country which does not have Islamic rule is a *Dar al-Harb* (Territory of War) and its non-Muslim subjects are *harbi* (enemy combatants). He understands *Dar al-Kufr* (Territory of Unbelief) to be synonymous with *Dar al-Harb* (Territory of War) and every non-Muslim *non-dhimmi* to be synonymous with a *harbi* (enemy combatant). Thus in his (Maulana Geelani) opinion all those countries that are under the domination of un-Islamic regimes are in every sense of the word *Dar al-Harb* and in such countries, those very laws should always be implemented which apply to *Dar al-Harb* in the books of *fiqh* (Islamic Jurisprudence).
4. In Maulana's opinion, the definition of *Dar al-Harb* as given by the earlier scholars and its description according to *fiqh* (Islamic jurisprudence) is totally applicable to India. Thus the status of Muslims of India according to *fiqh* is that of *mustamin* (a foreigner who seeks security and claims safe conduct and immunity from hostilities). In other words, Muslims reside in this *Dar al-Harb* (India) in the capacity of those foreigners who have been granted '*amaan*' (legal security and protection) by the government of the day.
5. The Islamic law regarding *mustamin* is that he cannot break the law of that un-Islamic regime in which he resides and has a pledge of security and protection. Therefore, in Maulana's opinion, obedience to the laws of the un-Islamic regime is such a solemn obligation for the Muslims of India that even the slightest deviation would entitle them to the punishment of Hell. But they are absolutely free to disobey most of the commandments and laws of Islam, simply because they reside in *Dar al-Harb*. The only reason why murder, pillage, stealing, robbery, bribery, fraud, and causing loss to the "enemy

combatants" (as interpreted by Maulana Geelani) and taking their wealth through other such means is prohibited for the Indian Muslims, simply because the law of the land also prohibits it, not because these acts are themselves unlawful in the Islamic Shariah. In India, the various laws and injunctions of the Islamic Shariah that deal with culture, the economy and ethics cannot be implemented as long as an un-Islamic regime is in power here. Thus of all the laws of the Islamic Shariah, only the law of contracts is applicable to the Indian Muslims. Hence all the financial transactions and means of income that are declared illegitimate by the law of the land become religiously prohibited for the Indian Muslims. In contrast to this, all those means of income that are declared to be prohibited by the Shariah but considered lawful by the law of the land become lawful both legally as well as religiously and neither is there any punishment for it in this world or the Hereafter.

A comprehensive response to the above mentioned evidence

In my opinion, not a single point elucidated by Maulana Geelani is true. Even the *Hanafi* law, of which Maulana is an ardent advocate, does not back these statements. The portrait of Islamic law sketched by Maulana in his article is not only erratic but also quite ugly. Whosoever looks at that picture is bound to form a very unfavourable opinion about Islam & Muslims. If someone unfamiliar with Islam and Muslims looks at that description, he would consider Islam to be the worst religion on earth and Muslims to be the most dangerous community, and would thank God that the laws of the un-Islamic regime are protecting the life, wealth & honour of other communities from the criminal hands of these "*mustamins*". On the other hand, if the Muslims begin to lead their lives in this country by accepting his interpretation of the Shariah then possibly within a span of 50 years, there would

not remain any 'name-sake' Islam in India. Rather, God forbid, had the Muslims followed these principles (as suggested by Maulana Geelani) then from the very beginning whatever little Islam is visible in the Muslims of India today would also have ceased to exist and within a span of 150 years itself the religious identity of the Muslims of India would have been absolutely disfigured and distorted. However, their wealth and estates would have remained safe and secure with the possibility of the birth of a mercantile class like the Marwaris, Baniyas and Seths⁸⁰ within the Muslims.

Of course I do not mean that Maulana Geelani has misrepresented Islam deliberately. I am sure that he has expressed the Islamic law in whatever manner he has understood it and he definitely tried to understand it with the highest levels of integrity and honesty. I differ with his perception and interpretation. Whatever little study of the Islamic law I have made, I would dare to say in its light that as far as the above mentioned issues are concerned, Maulana Geelani did not properly understand the principles and injunctions of the Shariah. There are two possible reasons for this misunderstanding.

Firstly, the era in which the *mujtahid* Imams (the scholars who performed independent reasoning) codified the constitutional law of the Islamic government and laws related to international matters in the light of the book of Allah, the guidelines of the Sunnah and their own *ijtihad*, in that period, the jurists were not merely people of learning and teaching, but they themselves were the government's legal advisers and chief justices of the courts. Day and night, the Islamic government was presented with ever new constitutional and international problems and which these very gentlemen would settle. These *mujtahid* Imams opined on issues related to war and peace with the neighbouring countries, on the legal issues

⁸⁰ Denoting types of Indian merchants

and problems that cropped up during the different transactions, relations and scenarios amongst people living under the Islamic domination. The determination of the meaning of legal terminology and phraseology used by them in their verdicts and judgments were not based merely on literal expositions, but derived from real-life situations to which these terminologies & phraseologies were applicable. Thus, there was practically no risk of any mistake in the application and implementation of the law even if there was some ambiguity in the terminology or phraseology or if only one term was used for different stages of a single process or event and nothing was found that could allude to the difference of stages by the usage of those terms or if one word was used for a wider meaning with a differentiation in meaning according to the time and location. There was no possibility that the guardians of law would apply a law to a totally different scenario merely because of the ambiguity of words, as at that time, the terminologies and specific legal phraseologies of the Islamic law were like currency in circulation. Those (terminologies) were prevalent in the practical world... there was no difficulty in understanding the meanings of those terms or in using them in the proper place and in knowing the right limitations of every term. Day and night every guardian of law would experience those situations either directly or indirectly in which this jargon was used. But now that situation does not exist since a while. Scholars no longer have practical experience of constitutional problems and international affairs. Islamic empires have been effaced from the face of the earth and whatever remains, even in them, the contemporary problems and issues are not related to (and debated by) the scholars of the Shariah. The prevalence (and implementation) of terminologies and phraseologies of the Islamic law has stopped since a long period of time. Now, these are just like the ancient coins whose value is not like the ones in circulation. In order to understand their market value, it is necessary to dig into the old records and try to understand the actual conditions

of that era by comparing them with the practical situation of the present era. This is the reason why the injunctions of the Islamic *fiqh* regarding political and constitutional problems are relatively more difficult than understanding the problems of marriage and inheritance. This is especially so where the phraseology has remained ambiguous in our books of *fiqh* or where the terminologies have expanded in scope. In all such instances it becomes more difficult for the scholars⁸¹ to understand these correctly and make the correct interpretation. Thus the text and the explanation of these books now hold only academic importance.

The other reason to which even the Maulana has also indicated is that since the past century and a half, Muslims have encountered wide spread economic destruction and the way in which their estates worth billions of rupees were sold cheaply and their aristocracy and landed gentry were reduced to penury, made the heart of every Muslim including the Maulana's, wrench with pain and he has tried with utmost compassion to find a solution to this calamity in the Shariah. Reeling under the influence of this sentiment he has deviated from the path of moderation and juristic caution in his writing. For example, his statement that refusal to take "interest" in

⁸¹ An interesting example of this point is mentioned in the Maulana's article where by quoting *Shaami*, he declared the verdict that all the oceans and seas are always un-Islamic dominions or territories. The period in which some *mujtahid* had initially said such a thing might have been correct according to the conditions of that time, but when the later generations found this verdict in the books of the earlier scholars then they made it out to be a permanent law of Islam just for the sake of *taqleed* (blind following). Although the oceans and seas are now one the biggest channels for foreign relations and no country could become the master of global influence and authority unless it gains supremacy over the seas. Had not the study of *fiqh* been limited to Madrassas (Islamic seminaries) and had the Islamic scholars maintained a "hands-on" relationship with world politics , then they would have realized how grave a mistake they have committed by concluding in their verdicts that Islamic dominion is confined only to land and does not apply to oceans and the seas.

India is a sin or all the injunctions forbidding *fasid* (invalid) contracts are limited to the mutual transactions amongst Muslims (and not between Muslims and non-Muslims). As far as the gut wrenching conditions of the Muslims are concerned, which Muslim heart might not be hurt from watching all this or who could not yearn for the deliverance of Muslims from this misfortune? In this respect, we do not differ one bit. But I vehemently refuse to accept that the economic devastation of Muslims in India is because they do not devour interest and their economic condition can only change if they legalize it. I reject the notion that the prohibition of interest acts as an obstacle in the economic progress of Muslims even slightly. Whosoever puts his faith in the Quranic injunction and believes

يَنْهَا اللَّهُ عَنِ الْمُنْكَرِ

"Allah will deprive interest of all blessing, and will nurture deeds of charity"

that this divine injunction to be an immutable reality regarding this world and the Hereafter must not fall prey to such kind of doubts. If the Maulana would lend some thought, then he will definitely realize that the actual cause of the economic devastation of Muslims is not because of "not dealing" in interest , but rather because of engaging in it, fleeing from the responsibility of paying *Zakat* and completely ignoring the Islamic economic system.

These are the sins for which Muslims are being punished. If they persist in these sins and keep devouring interest then it is quite possible that a few individuals amongst Muslims may become financially prosperous and a few naïve Muslims might be deceived by that mirage, but in reality, as a whole, there would not be any improvement in the economic condition of Muslims. In fact there could be a severe deterioration in the moral condition of the Muslims and in their mutual affection, cordiality, compassion, kindness, cooperation and support to the extent that their unity and mutual cohesion would be endangered and quietly fade away.

Whether you name it “*phav*” or مَأْكُولٌ مِّنَ السَّمَاءِ “food from the sky”, there will not be even the slightest of change in the reality and natural disposition of interest. By its inherent nature, interest is the complete opposite of *Zakat* and this reality does not change irrespective of a country being *Dar al-Harb* or *Dar al-Islam*. It is not possible to accommodate *Zakat* and interest together. There is a mindset that takes pleasure in counting the money, safeguarding it, growing it every week and month and taking stock of its growth. And there is another mentality which enjoys earning money through hard work, using it for personal consumption and also for feeding and helping others and spending generously in the way of Allah. Can anyone imagine these two attitudes to coexist in a single heart and mind? Can we expect that once a Muslim gets a taste of investing money for the sake of earning interest and monitoring its growth day after day, then would a single penny come out from his pocket for *Zakat* and charity? After this, would any Muslim agree to provide an interest free loan to another Muslim? And once the Muslim is addicted to earning interest, will not the condition of Muslims become identical to those about whom the Quran says

فَمَنْ قَسَطْ قُلُوبُكُمْ فَمِنْ بَعْدِ ذَلِكَ فَهُنَّ كَالْجَارِقَةِ أَوْ أَشَدُّ قَسْوَةً

(Then, after that, your hearts were hardened and became as stones or even worse in hardness)

And

وَلَتَعْدَنُهُمْ أَخْرَصَ النَّاسَ عَلَىٰ حَيَاةٍ

And verily, you will find them the greediest of mankind for life...

Why should an entire nation be forced to commit suicide just to create a few *Qaaruns* and a few *Shylocks*? And why should the Law of Allah and His Messenger (pbuh) be misinterpreted to justify this suicide? And why should one of the most revered personalities like Imam Abu Hanifa be (wrongfully) included in this responsibility? And again I would say, that since 1300 years, Muslims are the only nation in the

world who have been firm in opposing the capitalist system, and who have taken some practical efforts to destroy this corrupt system. It is the obligation of *Zakat* and the prohibition of interest which make them stand firm as opponents of Capitalism and which prevent them from getting sucked into it. Socialism, Communism and Nationalism can compromise with Capitalism but as long as these two powerful obstacles (namely *Zakat* and the prohibition of interest) remain in place Muslims will never compromise with Capitalism. This is the reason that all the nations which did not have a religion that prohibited them from consuming interest were thrown headlong into the capitalist system, but Muslims are still holding on strongly against it since the last thirteen centuries. How unfortunate, that when people across the world have begun realizing its futility and are gathering in their millions to destroy this (capitalist) system that the Muslims are leaving the battlefield by demolishing the fortified watch towers of their own fortress (Islam) and are extending the hand of compromise to the capitalist system!!

After this necessary introduction, we now turn to the actual legal debate.

Are fasid (invalid) contracts forbidden only between Muslims?

The basis of Maulana's first claim is that in the Holy Quran where Muslims have been prohibited from illegal means of income, there the word بَيْنَكُمْ (among you) is used. It means that Muslims should not base their mutual affairs on these *fasid* (invalid) contracts. Therefore, it is said:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُو أَمْوَالَكُمْ بَيْتَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ

O you who believe! Eat not up your wealth and property among yourselves unjustly except it be a trade amongst you, by mutual consent. (Surah Nisa: 29)

Now obviously, interest too is one of the illegitimate means of income, hence the injunction أَخْلَقَ اللَّهُ الْبَيْعَ وَحَرَمَ الرِّبَا“^١ “but Allah has permitted trade and forbidden interest” is mentioned in the Quran. Going by its language, the above verse from Surah Nisa appears to be a general commandment but the main stem to which this branch belongs should be considered as limited only to the mutual transactions between Muslims. This argument derives additional support from the Hadith of the Prophet (pbuh) narrated by Makholo that لَا رِبْوَ بَيْنَ الْمُسْلِمِ وَالْكُفَّارِ^٢. It then means that the term “interest” does not apply at all on any transaction between a Muslim and a *harbi* (combatant unbeliever) that involves quantitative disparity (*tafaadhul*). In other words لَا رِبْوَ (no interest in this Hadith) means that if interest is charged by a Muslim for a loan to a *non-dhimmi* then it should not be considered as interest and so it must also not be considered as *haram* (forbidden)?

The above is the summary of Maulana’s argument. The first and most fundamental mistake in this argument is that in an effort to take the literal meaning of the words the objectives of the Quran have been disregarded. It is true that the general style of the Quranic guidelines related to morality and transactions is that it only addresses the believers. And it commands Muslims that in mutual matters they should do so and so and refrain from so and so. There is some other wisdom for this style of expression, which we will avoid discussing presently. The only thing I wish to state here is that with this style of address all those injunctions given by Almighty Allah related to morals and transactions has never been interpreted by any jurist of the Ummah and decreed these injunctions to be applicable only to those issues and transactions that are affected only amongst Muslims. No jurist has ever said that the actions that are prohibited between the Muslims become legitimate and desirable when they take place between a Muslim and a non-Muslim. Were this to be true then Islamic

morality and Islamic law of civilization would become far removed from its fundamental principles. Allah says

وَلَا تَتَخَذُوا أَيْمَانَكُمْ دَخَلًا بَيْنَكُمْ

And make not your oaths, a means of deception among yourselves.
(Surah Nahl: 94)

and

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَنْهَوُنَا اللَّهَ وَرَسُولَنَا وَتَنْهَوْنُّا أَمْتَشِكُمْ وَأَنْتُمْ تَعْلَمُونَ ②

O you who believe! Betray not Allah and His Messenger, nor betray knowingly your Amanat (things entrusted to you).
(Surah Anfal: 27)

Does this mean that Muslims are supposed to protect and honour only those trusts that have been given to them by Muslims and are free to misappropriate and embezzle the trusts of the unbelievers?

Look at the verse

فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلْيَؤْذِدُ الَّذِي أُوتُمْ أَمَانَةَ وَلْيَعْقِلْ اللَّهَ رَبَّهُ

"then let there be a pledge taken (mortgaging); then if one of you entrust the other, let the one who is entrusted discharge his trust (faithfully), and let him be afraid of Allah, his Lord.
(Surah Baqarah:283)

could this be interpreted that instead of a Muslim if a non-Muslim, deposits his money with a Muslim in good faith but without documenting the transaction, then, does the Muslim have any right to usurp that money which has been entrusted to him saying that it is *phav* (wealth that has been obtained from the enemy with hostilities and hence becomes legitimate to be usurped)?

Then the commandment which is as follows

وَأَشْهِدُوكُمْ شَهِيدَيْنِ مِنْ أَنْجَالِكُمْ

لَا يَأْبُث الشَّهَدَةَ إِذَا مَا دُعُوا

وَلَا تَكْنُمُوا الْفَقَاهَةَ

وَأَشْهِدُوكُمْ إِذَا أَتَيْتُمُوهُمْ وَلَا يُضَارُ كَاتِبٌ وَلَا شَهِيدٌ

(Surah Al Baqarah: 282,283)

Are all these injunctions related only to those matters that occur amongst Muslims? Refusing to testify in favour of a non-Muslim or hiding the true evidence and testifying falsely or threatening and intimidating a non-Muslim witness, are all these legitimate?

إِنَّ الَّذِينَ يُجْبِيُونَ أَن تَشْيَعَ الْفَحْشَةُ فِي الَّذِينَ آمَنُوا إِلَهُمْ عَذَابٌ أَلِيمٌ

Indeed, those who like that immorality should be spread [or publicized] among those who have believed will have a painful punishment. (Surah Al Noor: 19)

From the above verse of Surah Noor can it be argued that it is legitimate for the Muslims to promote immorality and promiscuity among the non-Muslim communities?

إِنَّ الَّذِينَ يَرْمُونَ النِّسَاءَ بِالْغَيْلَةِ الْمُؤْمِنَاتِ لَعْنَاهُنَّ فِي الدُّنْيَا وَالْآخِرَةِ

Indeed, those who [falsely] accuse chaste, unaware and believing women are cursed in this world and the Hereafter. (Surah Al Noor: 23)

From this commandment of Surah Al Noor can it be interpreted that the non-Muslim women could be made the target of false accusations and slanders?

وَلَا تُكْرِهُوهُنَّا فَتَنِيْتُكُمْ عَلَى الْبِغَاءِ إِنَّ أَرْذَنَ تَحْصِنَنَا لِتَبْتَغُوا عَرَضَ الْحَيَاةِ
الَّذِيَا

And do not compel your slave girls to prostitution, if they desire chastity, to seek [thereby] the temporary interests of worldly life. (Surah Al Noor: 33)

Then, as to this divine statement – verse 33 of Surah Noor - does this mean that trading the helpless and destitute non-Muslim women for prostitution and then living off their expenses becomes legitimate? By making such interpretation, could it be legitimate for a Muslim to acquire a government license and run a prostitution den?

وَلَا يَغْتَبْ بَعْضُكُمْ بَعْضًا، أَتَيْحِثْ أَخْدُوكُمْ أَنْ يَأْكُلْ لَحْمَ أَخِيهِ مَيْتًا
 فَكَرِهُهُمُوا

..do not ..backbite each other. Would one of you like to eat the flesh of his brother when dead? You would detest it...

(Surah Hujurat : 12)

Then, as to the following Divine guidance of Surah Al Hujurat: 12. What would this be its interpretation? Would it mean that back-biting Muslims is illegitimate? And there is nothing wrong in back-biting non-Muslims.

If the Quran and the Sunnah are interpreted according to this principle, can you imagine the situation if Muslims start following it. Suppose, we accept without evidence that the injunction لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْأَطْهَارِ “Eat not up your wealth and property among yourselves unjustly” is specific only to the mutual affairs of Muslims and this rule is not applicable to other injunctions, then the question that arises is: why are non-Muslim *dhimmis* prohibited from carrying out interest based transactions? And why did the Prophet (pbuh) make such covenants with the non-Muslim delegations that they must forsake interest? And why do we find the clarification in the books of *fiqh* which say that if a non-Muslim combatant seeks *amaan* (protection and security) in a *Dar al-Islam*, then carrying out interest based transaction is forbidden for him?

As for the Hadith لا ينوي المسلم والغزي (there is no interest between a *harbi* and a Muslim) then first of all, the word *harbi* (combatant) does not merely mean a non-Muslim *non-dhimmi* but rather an individual from a country which is at war with Islam, as it will be proved from the explicit statements of the *Hanafi* jurists themselves.

Secondly لا ينوي (there is no interest) does not mean that the interest charged from a non-Muslim combatant is not supposed to be deemed as interest , but rather it should be construed that

although it is interest in form and reality, it is however exempted from prohibition by law and its position is as if it is not interest. Otherwise, to say that any kind of interest is not interest at all is so preposterous and meaningless that I consider it to be a sin to attribute such a thing to the Prophet (pbuh). It is a totally reasonable thing that in special circumstances, interest be exempted from punishment and prohibition just as the Quran itself has permitted the consumption of carrion, pork and other such things under extremely exceptional conditions and in cases of emergency. But it is extremely irrational for interest to remain unchanged if we call it interest at one place and totally refuse to consider interest in another. In this way, any forbidden act could be made lawful just by changing the name to whatever deceit the heart suggests, with the only condition that "please don't consider it deceit at all"! If you want to justify a lie simply state that the attribute of lying does not apply to it. If one is inclined towards back biting, immorality and unlawful means of income, just because the name is changed, then does it mean that its reality also changes? The stature of Prophet Muhammad (pbuh) is far above this practice of juggling with words.

Thirdly, the command which is stated in this Hadith is merely that of concession and discount and it is not all intended to make it a common code of conduct for the Muslims. I consider it totally unnecessary to debate the authenticity of this Hadith, because in accepting and rejecting a Hadith, the principles of a jurist are slightly different as compared to the principles of a *muhaddith* (a Hadith scholar). To totally discredit the Hadith that were certified to be authentic by such respectable "*mujtahidoon*" like Imam Abu Hanifa and Imam Muhammad is not correct. It is also incorrect to spread this brief unclear and varied Hadith⁸² having a single

⁸² It should not be ignored that Imam Abu Yusuf, Imam Shaf'ee, Imam Malik, Imam Ahmed and most of the Hadith scholars have rejected this narration.

narration to the extent, that you equate all the evidence of the Quran, all the Hadith and the sayings of Sahaba together with just this single Hadith. And then, instead of interpreting this solitary Hadith in the light of all these sources of Islam, the opposite is performed wherein the interpretation provided by all these sources is modified and molded to suit this single Hadith. In the Quran and in all the authentic Hadith, *Riba* is absolutely prohibited which means that Muslims can neither undertake interest based transactions among themselves nor it is legitimate for them to do business with non-Muslims that involves interest. It appears very clear from the deal made by the Prophet (pbuh) with the people of Najran that not only did Muslims keep away from interest themselves but would forcibly stop those non-Muslims (from devouring interest) over whom they have influence. After the prohibition of interest, there is not a single incident where a Muslim might have made an interest based transaction with a *dhimmi* or a *non-dhimmi* with the knowledge and permission of the Prophet (pbuh). Even from the period of Rightly Guided Caliphs, not a single example can be produced. And this just doesn't stop at interest; there is not a single invalid contract among all other *fasid* (invalid) contracts whose transaction was permitted by the Prophet (pbuh) once the injunction prohibiting it was revealed. Never mind the people who were only waging a war of ideas, the Prophet (pbuh) refused to take anything from even those who were physically fighting wars with him and wanted to make an invalid contract with him by offering him (pbuh) a huge sum of money⁸³.

⁸³This incident is related to the battle of Trench and Abdullah ibn Abbas (r) is its narrator. The dead body of an eminent person from among the idolaters fell into the Trench. They wanted to acquire the body from the Muslims. When the Muslims asked the Prophet (pbuh), he forbade them from doing so (Kitab Al Kharaaj, Imam Abu Yusuf, Amriya edition pg123). It is known from this, that even though Muslims were given permission to conduct *fasid* (invalid) contracts with the enemies on the occasion of war, it was never bereft of aversion and it does not befit the Muslims to take advantage of it without any exigent situation. Another

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On the other hand, there are so many Quranic verses, numerous clear and authentic sayings of Prophet (pbuh) and the genuine practice of the Prophetic era, from which it is clearly established that not only interest, but rather all the *fasid* (invalid) contracts are absolutely illegitimate for the Muslims, and in this regard, there is no distinction between a Muslim or a non-Muslim, a *dhimmi* or a *non-dhimmi*. On the other hand we are confronted with this single mursal Hadith (a Hadith whose chain does not end at the Prophet (pbuh)) which against all the other sources of Islamic knowledge is only proving the interest based transaction between a combatant and a Muslim to be lawful. Maulana Geelani has given so much importance to this Hadith that on its basis not just interest, but all the *fasid* (invalid) contracts with non-believers become universally lawful. And even if we accept it to be true, still we would be able to extract only a single permission from it and that is that under exigent conditions if a Muslim is to charge interest to an enemy or makes a *fasid* (invalid) contract, then he will not be prosecuted. It is merely a concession which was never utilized by the principled and God fearing Muslims. A sense of Islamic honour and esteem demands that a Muslim should never accept unlawful earnings. Especially while interacting with unbelievers and the enemies, he must display dignity and probity with great pride for the simple reason that a Muslim's armor and ammunition are his ethics and morality. His aim is not to acquire wealth and property but to spread the principles of Islam. Now if he were to lose these noble traits and sacrifice the principles for which he has been raised up as a community then what superiority could he claim over others? On what

incident also bears witness an incident that happened with Abu Bakr Siddiq (.r). Before the prohibition of gambling, he made a bet with idolaters in Makkah and then he collected his money from them during a situation of war between the Muslims and the idolaters and there was only a temporary suspension of war. But the Prophet (pbuh) did not consider even this to be permissible and good and ordered Abu Bakr (.r) to give away the money in charity.

basis could he gain victory and by what power could he win the hearts and minds of people?

The Debate Concerning Dar al-Harb

Now we need to focus on the other question: what is the difference between the injunctions related to interest and all other *fasid* (invalid) contracts keeping in mind the differences between *Dar al-Harb* and *Dar al-Islam*? And what is the reality of the statement that the blood and wealth of a *dhimmi*-unbeliever is permissible and hence worthy of being confiscated and usurped by every possible means? And does the Shariah subject all the commandments that apply to *Dar al-Harb* to its citizens forever?

Three categories of Islamic law

Please bear in mind that in this connection, the Shariah has divided the Islamic law into three categories:

- 1) Religious law which is related to every Muslim, without exception.
- 2) Constitutional law, which is related only to the Islamic government
- 3) International law or more correctly the law dealing with foreign relations as between Muslims and non-Muslims (residing in a foreign country).

These laws are neither codified separately in our books of *fiqh* nor are they mentioned with separate names. But there are very clear indications in the Quran and Hadith which show that the natural development of the Islamic laws is along three separate lines. Especially the great jurist whose legal insight and meticulous juristic scrutiny had understood these indications more than anybody and on the basis of which he made appropriate division between the boundaries of these three categories and kept this distinction in mind even in the

most complicated of legal problems was none other than Imam Abu Hanifa. Among all the jurists of Islam no one appears equal to him in stature. Even Imam Abu Yusuf, who had such profound insight, could not reach his level. A small proof of the great Imam's excellence is that till today, the development of legal thought in the world has not progressed even an inch forward from the constitutional and international laws compiled by him and derived from the Quran and Sunnah some 1200 years ago. Rather the fact remains that this development (of *fiqh*) still finds itself treading the same path which was shown by a cloth merchant of Kufa more than twelve centuries ago (i.e. Imam Abu Hanifa). Even the development of the contemporary secular law has to a certain extent been derived from the Hanafi *fiqh* along with the changes in culture and the international situation. Thus, to a large extent the laws of modern era are a replica of the Hanafi *fiqh* and its study would be helpful in understanding the Hanafi *fiqh*.

Religious law

In accordance with religious law, the world is divided into 2 *millats* (groups / communities) namely Islam and Kufr. All the Muslims are one nation and the unbelievers are the other nation. All the Muslims are united in this nationhood and have rights over each other on the basis of religious brotherhood.

فَإِن تَائُوا وَأَقَامُوا الصَّلَاةَ وَآتُوا الزَّكُوْةَ فَإِخْرَجُوكُمْ فِي الْبَيْنِ

But if they repent, establish prayer, and give Zakat, then they are your brothers in religion. (Surah Tauba: 11)

ان دماءكم واموالكم واعراضكم عليكم حرام

"A Muslim's life, his wealth, and his honour everything is forbidden for another Muslim" (The Farewell Hajj Sermon of Prophet (pbuh))

Thus obedience to all the commandments of Islam is mandatory for Muslims, whether he lives in any part of the world. Whatever is made lawful, it is lawful for everybody,

whatever is made obligatory, it is obligatory for everybody and whatever is unlawful it is unlawful for everybody. As the address of all the Quranic commandments (while addressing Muslims) is أَلِّيَّنَتْ أَمْنُو “those who believe”, it means the Quran is addressing all the Muslims of the world and not Muslims related to a particular situation or a particular geography. As opposed to this, *kufr* (disbelief) is the other “*millat*” (way of life) against which we differ on principles, beliefs and the approach to nationalism⁸⁴. On the basis of these differences, there is primarily a confrontation between us and them, except if there is a compromise or an agreement or a pact of security that decreases the confrontation. Thus it is not peace between Islam and Kufr, between a Muslim and a non Muslim that is permanent and enduring but rather it is the mutual struggle between them that is incessant and unending. Peace acts as an obstacle to the struggle between Islam and Kufr. However this war is not actual but virtual, ideological and doctrinal. This would only mean that as long as our nationalism is different from theirs and as long as our principles and their principles clash with each other then there cannot be any real permanent peace and friendship between us and them.

إِنَّا بُرَءُوا مِنْكُمْ وَمِمَّا تَعْبُدُونَ مِنْ دُوَنِ اللَّهِ كَفَرْنَا بِكُمْ وَبَيْنَنَا
وَبَيْنَكُمُ الْعَدَاوَةُ وَالْبَغْضَاءُ أَبْدَى حَتَّىٰ تُؤْمِنُوا بِاللَّهِ وَخَذَلُهُ

“Indeed, we are disassociated from you and from whatever you worship other than Allah. We have denied you, and there has appeared between us and you animosity and

⁸⁴ Let it be clear that we are not using the word “nationalism” here in the sense of ‘ethnic’ or ‘geographic’ nationalism but rather in a cultural sense and it is on the basis of this nationalism that Islam builds its edifice of cultural and political nationalism. Two sons of a mother can be bonded by ethnic nationalism. Two residents of a neighbourhood can be bonded by geographic nationalism but if one of them is a Muslim and other a non-Muslim then they differ in their cultural nationalism and there would arise some principled differences over which we are debating.

hatred forever until you believe in Allah alone" (Surah Mumtahina : 4)

This topic is explained with completeness and perfection in a brief Hadith of the Prophet (pbuh):

أَمْرَيْتُ أَنْ أَقْاتِلَ النَّاسَ حَتَّى يَشْهُدُوا أَنَّ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّداً عَبْدُهُ
وَرَسُولُهُ وَأَنْ يَسْتَقْبِلُوا قِبْلَتَنَا وَأَنْ يَأْكُلُوا ذَبِيْخَتَنَا وَأَنْ يَصْلُوْنَا صَلَوَتَنَا
فَإِذَا فَعَلُوا ذَلِكَ حُرْمَتْ عَلَيْنَا دِمَاؤُمْ وَأَمْوَالُهُمْ إِلَّا بِحَقِّهَا لَهُمْ
مَالِ الْمُسْلِمِينَ وَعَلَيْهِمْ مَا عَلَى الْمُسْلِمِينَ -

(ابو داؤد باب على ما يقاتل المشركين)

"I have been commanded that I fight till people testify that there is no God but Allah and Muhammad is His slave and messenger, face our Qibla during prayer, eat our slaughtered meat and pray like us. When they do so then their blood and wealth will become inviolable for us except when the Truth demands that they be taken. They will have the same rights as Muslims and they will have the same responsibilities as Muslims".

(Abu Dawood – Ba'b ala Ma Yuqaatil al Mushrikeen)

In accordance with this religious law, there is an eternal war between Islam and *Kufr*. But this war is merely a war of ideas. Every non Muslim is a *harbi* (enemy combatant) but in the limited perceptual sense that we differ in our outlook on nationalism and other matters. Thus every *Dar al-Kufr* is theoretically a *Dar al-Harb* and this war of ideas can only come to an end when the difference in the perception of nationalism is effaced. The religious law presents an ideology and a basic principle very clearly before the Muslims from which they can derive their strategy. As for the rights and obligations and the practical problems of war and peace, then these are not related to this religious law but to the constitutional and international laws.

Constitutional law

In accordance with the Constitutional law, Islam divides the world into two parts: *Dar al-Islam* and *Dar al-Harb*. *Dar al-Islam* is the territory where there Muslims rule with Islamic law in full effect, or there would be enough power with the rulers to implement the Islamic law⁸⁵.

⁸⁵ This definition of *Dar al-Islam* needs a little explanation. *Dar ul-Islam* implies the territory where Islam as a system or way of life is in authority and where Islamic law is implemented as national law. But if there is to arise a situation where although the power might lie in the hands of the Muslims, but they establish a system other than Islam or implement any system other than the Islamic, then if the jurists of Islam out of disappointment, from these events, do not consider it appropriate to impulsively declare that country to be *Dar al-Kufr* but rather, they keep declaring it to be "*Dar al-Islam*" until the Muslims themselves sever even the nominal relation they have with Islam. This cautious behaviour of the jurists is based on one of the two rules for any authorized government of Muslims to qualify as "Muslim" in principle and practice (via the implementation of Islamic laws). First is that the Muslim citizens of the country continue to be believers in Islam as usual and would want to lead their lives in its obedience but due to some or the other reason; a deviated class occupies the reins of power. The other is that a general ignorance and misguidance has prevailed among the citizens of the country and due to their own choice and likeness, this misguided and misleading class has assumed power and is conducting the national affairs in an un-Islamic way. In the first scenario, it is very much likely that the Islamic conscience of the Muslim masses might awaken one day and they would topple the authority of this deviant class which is running the business of *Kufr* in the house of Islam. That is why there is no reason to get upset over the temporary dominance of *Kufr*, and hence out of impatience declare this house to be *Dar al-Kufr*. As for the second scenario, then undoubtedly it is very disappointing, but the nation which hasn't broken off its relationship with Islam despite ignorance and misguidance and which still says that its religion is Islam despite being destroyed so utterly, we cannot remain disappointed with it that we sever off all our hopes for it to return to the true and real Islam. Therefore, we will still not call it a *Dar al-Kufr*, but rather

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In contrast to this, where a government of the Muslims does not exist and Islamic laws are not implemented then that territory is known as *Dar al-Kufr*. It is just like all those countries under the suzerainty of the British and came to be called 'British territories'. And those territories that are outside these limits (of British rule) are called 'foreign territories'. An Islamic government can implement its laws only over the people who come under its jurisdiction. In a similar fashion, it can protect only that wealth and those lands and lives which fall within its own authorized limits or territories. It is not responsible for the protection of anything beyond these limits. According to this law, all wealth, every life, every property and every honour is "protected" which falls under the protection of the Islamic government in *Dar al-Islam* regardless of it belonging to a Muslim or a non-Muslim. Similarly every life, wealth and honour is "unprotected" which lies in *Dar al-Kufr* and whose protection is not the responsibility of the Islamic government irrespective of it belonging to a Muslim or a non-Muslim. The outcome of being "unprotected" only implies that if anyone's life, wealth or honour is attacked in a *Dar al-Kufr*, then the Islamic Government will not be able to conduct any prosecution of the guilty because this act occurred outside the limits of its jurisdiction. Now it is a totally different thing for that act (of misappropriation) to be considered a sin or not in the sight of Allah and to be prosecuted by Him or not. Hence being an "unprotected" thing neither necessitates its permissibility, neither should the absence of its protection be construed as a license to cause harm to it or to confiscate and

keep calling it *Dar al-Islam*. However it should be clearly understood that Islamic Law is only related to the real *Dar al-Islam* and not to those territories, that are held as *Dar al-Islam* as a matter of expediency and helplessness. As to the 'subsidized' *Dar al-Islam* which itself has broken its legal relationship off with Islam, then Islam is not ready to grant constitutional rights to its political system which it has reserved only for the genuine 'Islamic Rule'.

hold that it is (now) legitimate or permitted in the sight of Allah (to be usurped and consumed). In a similar fashion, from the perspective of constitutional law, if any such act is to be made legitimate which was committed in *Dar al-Kufr*, then its meaning could only be understood to the extent that the Islamic government would have no objection to it. It would not punish anyone for it. But this does not mean that this unlawful act would go unpunished by Allah.

This is how the boundaries of religious law and the constitutional law get separated. The Muslim who is called 'a brother in religious law and whose life and property is inviolable, he and his belongings become unprotected in the sight of the constitutional law for the simple reason that he stays outside the geographical limits of the Islamic State. And the non-Muslim who is regarded as an enemy under religious law, is considered protected in the constitutional law simply because he now lives under the protection of the Islamic State. Those acts which are considered as grave sins by the religious law are not considered with the same severity by the constitutional law and are not prosecutable simply because the act happened outside its (geographical) jurisdiction. The open difference between these two is that the religious law is related to the Hereafter, whereas the constitutional law is related to this world and its affairs. But except Imam Abu Hanifah, nearly all of the jurists got confused in this matter and were unable make the distinction between these limits.

Let us simplify this complicated issue through a few examples:

1. Suppose a Muslim businessman enters a *Dar al-Harb* by taking *amaan* (protection and security) and steals money there. This act is unlawful according to the religious and international laws because he breached the pledge (he had made with the *Dar al-Harb*) but the constitutional law regards that person to be the legitimate owner of the stolen

money and does not question him. (*Hidayah*, *Baab Al mustamin*).

2. Assume that a person from among the citizens of *Dar al-Islam* is imprisoned in *Dar al-Harb*. He gets released from the prison. Now whether he commits theft there or consumes alcohol or commits adultery, then all prosecution is beyond the scope of the *Dar al-Islam* according to the constitutional law. (*Bahr Al Raaiq*, vol.5, pg.107). That is, the Islamic Government would neither punish him by amputation over this, nor enforce the punishment for adultery and alcohol consumption, nor would it enforce the law of *Qisaas* (equal retaliation)⁸⁶. But according to the religious law, he would definitely be considered a sinner in the eyes of Allah.
3. Suppose a person becomes a Muslim in *Dar al-Harb* and does not migrate to *Dar al-Islam*. From the viewpoint of the religious law, he has already become a brother of a Muslim. His blood and his wealth have now become inviolable. But since he resides outside the borders of the jurisdiction of the Islamic State, none of his things are to be protected. His position would be exactly like the citizen of an enemy state. If a Muslim kills him outside the limits of *Dar al-Islam*, then neither the Islamic court would impose '*Qisaas*' over his Muslim killer nor would the government provide any blood-money; he himself out of his own accord could pay the expiations. Similarly, if a Muslim charges interest over an amount he loans him or seizes his wealth by any illegal means, then according to the

⁸⁶ Let it be clear, the government of Dar-ul-Islam can definitely prosecute those citizens of Dar-ul-Islam who commit crimes and immoral acts in foreign countries that bring shame to Islam and Muslims by their behaviour and can also prosecute them for creating complications in international affairs through their behaviour, but cannot prosecute them for the crime (e.g. murder or theft) which they have committed outside the geographic borders of Dar-ul-Islam.

constitutional law he cannot be arrested because his wealth is unprotected. In this regard, the explanations of the jurists are significant:

وإذا سلم رجُلٌ من أهْلِ الْحَرْبِ فَقَتَلَهُ رجُلٌ مِّنَ الْمُسْلِمِينَ قَبْلَ أَنْ يَخْرُجَ إِلَى دَارِ الْإِسْلَامِ خَطَأً فَعَلَيْهِ الْكَفَارَةُ وَلَا دِيَةً عَلَيْهِ وَفِي الْمِلَاءِ عَنْ أَبِي حَنِيفَةَ رَحْمَهُ اللَّهُ أَنَّهُ لَا كَفَارَةً عَلَيْهِ أَيْضًا لِأَنَّ وُجُوهَهُمْ يَاعْتِبَارِ تَقْوُمِ الدَّمْ لَا يَاعْتِبَارِ حُرْمَةِ الْقَتْلِ وَتَقْوُمُ الدَّمْ يَكُونُ بِالْأَحْرَازِ بَدَارًا إِلَّا سَلَامًا۔

"If someone from the harbis (enemy combatants) becomes a Muslim and before he could migrate to Dar al-Islam a Muslim kills him unintentionally, then he is liable to pay the expiations but the payment of blood-money is not mandatory for him. According to Imam Abu Hanifah, even the expiation is not required because the obligation of expiations is only when the blood is of any value, not because killing is prohibited. And the blood becomes valuable only when he has already come under the protection of Dar al-Islam."

(*Sharh al Seer al Kabeer Printed by Darul Maroof Vol 1 page 88*)

وَلَا ثَبَّتَ بِمَا قَدَّمْنَا أَنَّهُ لَا قِيمَةَ لِدَمِ الْمُقِيمِ فِي دَارِ الْحَرْبِ بَعْدِ إِسْلَامِهِ قَبْلَ الْهِجْرَةِ إِلَيْنَا ... اجْرُوا لِأَصْحَابِنَا مَجْرِيَ الْحَرْبِ فِي إِسْقَاطِ الْضَّمَانِ عَنْ مَتَّلِفِ مَالِهِ ... وَأَنْ يَكُونَ مَالُهُ كَمَالُ الْحَرْبِ مِنْ هَذَا الْوَجْهِ وَلِذَلِكَ أَجَازَ أَبُو حَنِيفَةَ مُبَايعَتَهُ عَلَى سَبِيلِ مَا يَجُوزُ مُبَايعَتَهُ الْحَرْبِيِّ مِنْ بَيْعِ الدِّرَزِهِمِ بِالْبَرِزَقَمَيْنِ فِي دَارِ الْحَرْبِ

"And since it is proved from what we have said before that whoever becomes a Muslim and does not migrate (to Dar al-Islam) and stays in Dar al-Harb, there is no value attached to his / her blood"⁸⁷. Then exactly on this basis our

⁸⁷ It means that any Muslim who is not within the protection of the Islamic Government but rather remains outside the limits of its jurisdiction, however valuable his / her blood might be in itself, but for the Islamic Government it has no legal value. If such a person is injured, the Islamic Government cannot come to his rescue. If he is to be killed, then the Islamic Government is not responsible for (compensating his relatives / tribe by) arranging the *Qisaas* or the blood-money. If someone is to unjustly usurp ... contd. On next page

fellow Hanafi jurists have also declared the position of such a Muslim to be that of an enemy combatant i.e. there will not be any punishment for one who usurps his wealth. In this respect, his wealth is like the wealth of an enemy combatant and on this basis Imam Abu Hanifah declared doing business with him to be legitimate just as doing business with an enemy combatant is legitimate i.e. selling one dirham for two in Dar al-Harb". (Ahkam Al Quran - al Jassas al Hanafi, vol.2, pg.297).

وقال الحسن بن صالح اذا اسلم الحربي فاقام بيلادهم وهو يقدر على الخروج فليس ب المسلم يحكم فيه بما يحكم على اهل الحرب في ماله ونفسه.

"Hasan bin Saleh said that when a citizen of Dar al-Harb continues to stay in Dar al-Harb even after becoming a Muslim (and does not migrate to Dar al-Islam) even though he has the power to migrate then his status is not equal to that of a Muslim⁸⁸. The same injunctions apply to

his wealth and honour, then it is not obligatory for the Islamic Government to prevent this injustice. But all these are from a legal perspective. Otherwise from religious point of view, the wealth, life and honour of a Muslim is more valuable to the Muslims of *Dar-ul-Islam* than the entire world and the religious zeal of the Muslims of *Dar-ul-Islam* demands that they lend as much moral support and help as possible to the Muslims of *Dar-ul-Kufr*.

⁸⁸ In the present scenario, besides stipulating "the ability to migrate", another condition has to be added namely that the *Dar-ul-Islam* has opened its doors to emigrants and there is an announcement from the Islamic Government that the Muslims belonging to *Dar-ul-Harb* or *Dar-ul-Kufr* or some specific *Dar-ul-Harb* or *Dar-ul-Kufr* may migrate to *Dar-ul-Islam*. Now in this scenario, even after having the ability and means to migrate, if they do not, then the Muslims of *Dar-ul-Islam* would treat them in exactly the same way as other citizens of that *Dar-ul-Kufr* or *Dar-ul-Harb* are treated. And those who are genuinely unable to migrate (because of lack of resources or some other reason), they will not be treated like non-Muslims even though they have no constitutional rights. Rather the army and other Muslims would be instructed to save them as much as possible in a war and behave with them with kindness and leniency. However if there is no invitation to immigrants by the Government of *Dar-ul-Islam* to those Muslims who reside in *Dar al-Harb* nor does the *Dar al-Islam* open its

him regarding the viability of his life and wealth which is applicable to that of an enemy combatant". (Ahkam Al Quran).

وَإِذَا أَسْلَمَ الْجُنُبُ فِي دَارِ الْحَرْبِ فَقَتَلَهُ مُسْلِمٌ عَمَدًا أَوْ خَطًّا وَلَهُ وَزْنَةٌ
مُسْلِمُونَ هُنَاكَ قَلَاشَنِي عَلَيْهِ إِلَّا الْكَفَارُ فِي الْخَطَاءِ

"When an enemy combatant (*harbi*) had become a Muslim in *Dar al-Harb* and a Muslim kills him by mistake or on purpose and his Muslim heirs too reside in *Dar al-Harb*, then there is neither *Qisaas* nor blood-money for him. In the case of mistake, only expiations are to be paid. (Hidayah Kitaab al Seer)

وَحُكْمُ مَنْ أَسْلَمَ فِي دَارِ الْحَرْبِ وَلَمْ يَهَا جَرْكَ الْجُنُبِ عِنْدَ إِبْنِ حَنِيفَةِ لِأَنَّ
مَالَهُ غَيْرُ مَغْصُومٍ عِنْدَهُ.

*And if a person becomes a Muslim in *Dar al-Harb* and does not migrate, his status is that of an enemy combatant in the eyes of Abu Hanifah because in his opinion his wealth is unprotected".*

(Bahr Al Raaiq Chapter Vol 5 page 147).

4. Suppose a Muslim went to *Dar al-Harb* by taking *amaan* (protection and security) and defaulted on a loan from someone there or usurped the property of a non-Muslim in the *Dar al-Harb*. He then returned back to *Dar al-Islam* and that enemy combatant (from whom the Muslim had taken a loan / usurped his property) too came to *Dar al-Islam* by taking *amaan*. Here that *harbi* (enemy combatant) cannot file a case in the courts of *Dar al-Islam* for that unreturned

doors to welcome them, then in this situation, the statement of Hasan bin Saleh that "his status is not equal to that of a Muslim" applies to a person who despite having the ability and resources does not migrate. However this principle of the constitutional law remains unaltered namely: that the Muslim who is not a citizen of *Dar al-Islam* and lives in a territory outside the borders of *Dar al-Islam* the responsibility for protecting the lives, wealth and honour of those Muslims is not on the government of *Dar al-Islam*.

loaned money or the usurped property. The Islamic court will not return him back even a single penny. Similarly, in *Dar al-Harb* if an enemy combatant has defaulted on a Muslim's loan or his wealth and then the enemy combatant comes to *Dar al-Islam* by taking *amaan*, even then the Islamic court will not come to the rescue of the Muslim against that enemy combatant. (Al Jaami' Al Sagheer of Imam Muhammad 'Ali Hamish, Kitab Al Kharaj of Imam Abu Yusuf).

5. If a father resides in *Dar al-Islam* and his children stay in *Dar al-Harb*, then his guardianship over his children will become null and void. In the same way, if the owner of wealth happens to be in *Dar al-Islam* and his wealth is in *Dar al-Harb*, then his life would be protected but not his wealth. (Fath Al Qadeer).
6. Two Muslim citizens of *Dar al-Islam* went to *Dar al-Harb* by taking protection (from the non-Muslim government) and one of them killed the other. If the killer returns to *Dar al-Islam*, then no *Qisaas* will be asked from him. The reason explained by the author of *Al Hidayah* is worthy of consideration:

وائِنَّمَا لَا يَجِبُ الْقِصَاصُ لِأَنَّهُ لَا يُفْكَنُ إِسْتِيقَاءُهُ أَنْ بِمَنْعَةٍ وَلَا مَنْعَةٍ دُونَ
الإِمامِ وَجَمَاعَةِ الْمُسْلِمِينَ وَلَمْ يُوجَدْ ذَالِكُ فِي دَارِالْحَرْبِ.

*"The reason why no *Qisaas* would be obligatory for him is that *Qisaas* without protection is not obligatory and there is no protection without a leader and the Muslim community. And this thing is not present in *Dar al-Harb*".*

(Al Hidayah, Kitab Al Seer)

7. Two Muslim citizens of *Dar al-Islam* were imprisoned in *Dar al-Harb*. One of them killed the other. Or a certain Muslim went to *Dar al-Harb* by taking protection and there he killed a certain Muslim prisoner. In both the scenarios there will neither be any *Qisaas* for the killer nor the

payment of blood-money. The explanation of 'Allama Ibn Hammam too is meaningful. He says:

فَلَا شَيْءَ عَلَى الْقَاتِلِ مِنْ أَحْكَامِ الدِّينِ إِلَّا الْكَفَارةُ فِي الْخَطَأِ إِنَّهُ أَبِي
حَنِيفَةَ وَانَّمَا عَلَيْهِ عِقَابُ الْآخِرَةِ فِي الْعَمَدِ--- لِأَنَّهُ صَارٌ بِالاسْرِيَّةِ
لَهُمْ--- وَصَارَ كَالْمُسْلِمِ الَّذِي لَمْ يُهَاجِزْ إِلَيْنَا فِي سُقُوطِ عَصْمَتِهِ
الدُّنْيَا.

"According to Abu Hanifah, of the worldly injunctions the killer is obliged to pay only expiation money in case the murder was committed by mistake. As for the murder committed on purpose, then even expiation is not required although he will be punished in the Hereafter. The reason why Qisaas and payment of blood-money is not applicable because after being imprisoned, he became subordinate to the combatants..... and his status became similar to that of a Muslim who did not migrate to us and in this respect his worldly protection becomes null and void".

(Fath Al Qadeer Vol 4 page 451).

Look how distinct is the difference between religious and constitutional laws in these examples. Religious law makes the Muslims one nation and separates them from the non-Muslims. Religious law demands the life, property and honour of a Muslim be preferred over that of a non-Muslim. But despite this universal cohesion (sanctioned by religious law), the constitutional law is quite inhibited and divides its jurisdiction to geographic and territorial limits. Life and wealth within the limits of the Islamic territory is "protected" irrespective of it belonging to a Muslim or a non-Muslim, because the Shariah has already taken its responsibility of protection. And whatever lies outside these territorial boundaries is "unprotected" irrespective of it belonging to a Muslim or a non-Muslim. If anyone steals within the Islamic limits, the punishment awarded shall amputation and if somebody kills, then *Qisas* or blood-money will be exacted from him. If someone earns money through illegitimate means, then the Law will confiscate that money and if any Muslim or a *dhimmi* (non-

Muslim subject of Islamic State) commits such a thing outside those territorial borders which is a crime according to the religious Islamic law, then neither can the Islamic state take any action against him in a foreign country nor can we punish him in our own land when returns because the act was done beyond the geographic borders where we are not responsible for the establishment of peace and protection of life and property. But all this is from a worldly perspective. If a sin is committed outside the borders of the Islamic territory, then just because the crime was committed outside the borders of the worldly government, it will only escape the worldly prosecution but will not escape Allah's prosecution because Allah's domain is ultra-territorial; whatever He has declared unlawful, it is unlawful in every place.

This is not any concocted law of Imam Abu Hanifah but rather it is derived from Quran and Hadith. That very Quran which on one hand says that

فَإِنْ أَقَامُوا الصَّلَاةَ وَأَتُوا الزَّكُوْهَ۔ فَلَا خُوْنَكُمْ فِي الدِّيْنِ

"if they establish Salah and pay Zakat, they are your brethren in religion" (9:11)

and

وَمَنْ يَقْتُلْ مُؤْمِنًا مُّتَّقِدًا أَغْرِيَهُ أَهُدُوهُ جَهَنَّمُ خَلِدًا فِيهَا

"And whoever kills a believer intentionally his recompense is Hell wherein he shall remain eternally"

(Surah Nisa :93)

and on the other hand differentiates between the blood of a Muslim living within the Islamic territory and a Muslim living in foreign land. The former, upon killing intentionally has to pay both expiation and blood-money and the latter has to merely pay the expiation⁸⁹.

⁸⁹ By "إِنْ كَانَ مِنْ قَوْمٍ تَّحْتَ أَذْنَابِكُمْ وَبِئْتَهُمْ قِيَّادٍ" if he was from a people with whom you have a treaty" (4:92) is meant that if a Muslim of a foreign land belongs to such a nation with which there already a treaty with the Muslims under the blood-money clause, then as the blood-money of a non-Muslim of that nation is

... contd. On next page

The Prophet (pbuh) sent Usama bin Zaid (.r) to a place called 'Harqaat' as an officer of a military expedition. A person wanted to save his life by pronouncing ﷺ لَا إِلَهَ إِلَّا هُوَ "There is no God but Allah". But the Muslims killed him. When the Prophet (pbuh) was informed about it, he summoned Usama and repeatedly said:

"Who will save you on the Day of Resurrection against (the call of) "There is no God but Allah"? But the Prophet (pbuh) did not order him to pay the blood-money⁹⁰.

Similarly on another occasion, a few Muslims got killed who lived outside the Islamic limits, so the Prophet (pbuh) said "إِنَّمَا أَنَا بَرِيءٌ مِّنْ كُلِّ مُسْلِمٍ يَقْتَلُ بَيْنَ أَهْلِ الْمَشْرِقِ وَالْمَغارِبِ" I am free from the responsibility of protecting any such Muslim who lives among the polytheists.⁹¹

Even in the Quran, a declaration of freedom from obligation of such a Muslim is mentioned:

وَالَّذِينَ أَمْنُوا وَلَمْ يُهَاجِرُوا مَا لَكُمْ مِنْ وَلَا يَتَهَمُّ مِنْ شَيْءٍ حَتَّىٰ يُهَا جِرْوًا

"And as to those who believed but did not emigrate (to you O Muhammad (pbuh)), you owe no duty of protection to them until they emigrate.." (Surah Anfal :72)⁹².

paid, so also the blood-money of a Muslim is paid. Hence, this blood-money is based on a treaty and not the Islamic protection. Refer Surah Al-Nisa, 4:92.

⁹⁰ Abu Dawood, Baab 'Ala Yugatil Al Mushrikeen.

⁹¹ Abu Dawood, Kitab Al Jihad. In another incident, the Prophet (pbuh) arranged for the payment of half of the blood-money to the victims. Most probably his act might be before the revelation of this ayah where the blood-money of such a victim becomes null and void.

⁹² This verse is one of the most important clauses of the constitutional law of Islam. The above verse lays the foundation for the principle that only those Muslims living within the geographic borders of an Islamic state or who enter the Islamic state by performing the “*hijra*” (migration) shall ... contd. On next page

In the same way, the Holy Quran and the Hadith have themselves separated the worldly protection from the religious protection and have clarified the limits / boundaries of the two. Of all the jurists of Islam, it is only Imam Abu Hanifah, who has clearly explained this delicate and complex issue. Even the great and majestic Mujtahid Imams like Imam Abu Yusuf, Imam Muhammad, Imam Malik, Imam Shaf'ee and Imam Ahmed ibn Hambal could not make a complete distinction between these two kinds of protection (by the religious law and the constitutional law).

Therefore, for example, if an individual from the *Dar al-Islam* kills another individual in *Dar al-Harb*, then all these jurists unanimously opine that *Qisaas* must be taken from the killer because he killed a person who was "protected by Islam"⁹³. Thus, since such great leading scholars got confused in this issue and it is not unlikely that the later explainers of Hanafi *fiqh* too might have faced similar confusion in understanding this point of Imam Abu Hanifah.

share a common citizenry ("valayat"). As far as those Muslims are concerned who reside outside the geographic boundaries of the Islamic state or who entered the Islamic state not by migrating but have entered the *Dar al-Islam* as citizens of the *Dar al-Kufr* then the relation between them and the citizens of *Dar al-Islam* will not be that of fellow citizens. In the Arabic language the word "valayat" means support, help and cooperation, proximity, guardianship and other words with similar meaning. From the reference and context of this Quranic verse the word "valayat" means the relationship which a citizen has with the state and with his fellow citizens. This verse emphasizes that inspite of being united by a religious brotherhood those Muslims residing outside the geographic boundaries of the Islamic state get excluded from being related to each other by a political and cultural bond. This leads to certain legal injunctions which are found in the "mabsoot" books of *fiqh*. For example the result of the absence of this "valayat" is that the Muslims of *Dar al-Islam* and *Dar al-Kufr* cannot intermarry and cannot inherit from each other. They cannot become legal guardians of each other. The Islamic government cannot appoint a Muslim on an official position who has not given up his citizenship of *Dar al-Kufr*

⁹³ Refer to Jam'e al Sagheer and Fatawa Qazi Khan

The Terminological Difference Between Dar al-Harb And Dar al-Kufr

Regarding the Great Imam (i.e. Abu Hanifah), we have researched that in all the problems which are mentioned above and in other similar problems, he has used the term “*Dar al-Kufr*” instead of *Dar al-Harb*, because from the point of view of constitutional law, *Dar al-Kufr* which is the opposite of *Dar al-Islam* could only imply ‘foreign territory’. There is no question of war or peace in it. The countries that have a peace treaty with the *Dar al-Islam* are also *Dar al-Kufr*. And all the injunctions mentioned above are related to these countries too. But since all the *Dar al-Kufr* were geographically connected to the *Dar al-Islam* in the early centuries of Islam, they generally used to remain *Dar al-Harb*, that is why the later jurists understood *Dar al-Kufr* to be synonymous with *Dar al-Harb* and ignored the subtle legal difference between these two terms.

Similarly in the works of Imam Abu Hanifah, we could not find any such word anywhere which might suggest that he understood “unprotected” to be “permissible”. He settles for calling things outside the limits of Islam to be “unprotected” and merely says to one who encroaches upon such things as لا شئ عليه “there is no grasp over him” or يالم يقض عليه “no court verdict will be issued against him”.

But most of the later jurists at many places got confused between “non protection” and “permissibility” which creates the misunderstanding that since the Islamic Government does not hold anyone accountable for any of the acts committed outside the geographic boundaries of the *Dar al-Islam*, then, Allah too will not hold one accountable (for the crimes committed outside the territorial limits of *Dar al-Islam*). Whereas (one should realize that) these two things are totally different and separate. If you steal from someone in India, it is very obvious that you will not be prosecuted in the courts of

Afghanistan. In accordance with the law of *Dar al-Islam* you are free from the blame but how does this mean that you are absolved of all charges in the court of God too?

Now you can appreciate the issue of the permissibility of conducting interest, gambling and other such invalid contracts in *Dar al-Harb* which are mentioned in the books of *fiqh* (jurisprudence) and which have been framed on the premise that an enemy combatant does not enjoy the protection under the *Dar al-Islam*. This issue has two aspects:-

- i. *Dar al-Harb* should be construed to apply only to "foreign territory" In a sense this issue is related to the constitutional law and it implies that since the *Dar al-Islam* has not taken the responsibility of protecting the wealth of an "enemy combatant" (implying that the non-Muslims of India are being looked at as foreign citizens of *Dar al-Islam* to which the Indian Muslims belong), we will not prosecute any citizen (Indian Muslim) of the *Dar al-Islam* who has earned wealth by charging interest to anyone or by gambling or by any other means outside the (geographic) limits of our jurisdiction and then returns irrespective of whether he is a criminal or not from the religious point of view.
- ii. Only that country should be considered *Dar al-Harb* with which we actually have a war (i.e. enemy country). In this aspect, this issue is related to the law of foreign relations which we shall present in the following pages.

International Law (related to foreign relations)

This domain of the Islamic Law discusses the legal perspectives about the life and property of those living outside the limits of the *Dar al-Islam*. Before speaking about its details, a clarification on a few matters is essential. In juristic terminology, the word "*Dar*" is synonymous with the English word "territory". The territorial limits in which the Muslims

have sovereign rights is the “*Dar al-Islam*” and the territory which remains outside these limits is “*Dar al-Kufr*” or “*Dar al-Harb*”. The law of foreign relations discusses these very issues which are born out of this territorial difference or distinction between the two territories with respect to lives and wealth.

As we have indicated previously, in their religious capacity, all the Muslims of the world are citizens of the Islamic Nation, but from the perspective of this domain of international law, they can be classified into three divisions. The first division is of those who are the citizens of *Dar al-Islam*. The second division is of those who are the citizens of *Dar al-Kufr* or *Dar al-Harb*. The third division is of those who although are citizens of *Dar al-Islam*, but temporarily reside in *Dar al-Kufr* or *Dar al-Harb* as Muslim *mustamin* (under protection of un-Islamic government). The rights and obligations of all of them are defined separately.

In contrast to this, although all the unbelievers are religiously outside the Islamic nation, even they are classified into a number of divisions in accordance with their conditions. The first are those who are natural born citizens or those who became naturalized subjects (of the *Dar al-Islam*) through payment of *jizya* and tax. Second are the domiciled foreigners who are not the citizens of *Dar al-Islam* but rather are residing in *Dar al-Islam* by seeking *amaan* (security and protection). Third are those who are the citizens of *Dar al-Kufr* or *Dar al-Harb* and have entered *Dar al-Islam* without any *amaan* (security and protection). Fourth are those who reside in their own territory.

Then there are a number of divisions of this last kind of unbelievers. One is those who have no treaty with the *Dar al-Islam* but also have no enmity against the state. The others are those who harbor enmity against the Muslims.

In this way, it is extremely important for the correct interpretation of the Islamic Law to keep these differences into

consideration that occurs in the status of persons and properties due to these territorial limits and the distinction that occurs between the injunctions as a result of this difference. Whenever only the words of the legal phrases are followed without taking these differences and distinctions into consideration, then not only in interest but also in most of the juristic problems such mistakes would be committed due to which the law would get distorted and would be used against its own aims.

After these necessary clarifications, we will now turn to the question: to exactly which territories does the term *Dar al-Harb* apply and to what extent? What are the injunctions regarding the different extents of the *Dar al-Harb*? How many levels exist for belligerency (level of enmity and hostility)? How does the nature of the permissibility of life and property change with respect to every level? Then according to the difference between the territories, what difference occurs between the status of Muslims and how do their rights and obligations change with respect to their status?

Types of Unbelievers

Of the types of unbelievers which we have mentioned above, everybody knows about the *dhimmis* (non-Muslim subjects of the *Dar al-Islam*) that except in matters of the consumption of alcohol and pork, their marriages with *Mahaarim* (i.e. unmarriageable kin) and in the worship of anybody / anything besides Allah they are the same as Muslims in all other matters. All the national laws of Islam will be enforced upon them too; they too are prohibited from all those things from which Muslims are prohibited. And they too have the rights to life, property and honour which the Muslims of *Dar al-Islam* have. The matter of non-Muslim *mustamin* (protection seeker) is no different from the *dhimmis* because the injunctions of the Islamic Government are enforced on them too and being in *Dar al-Islam*, they too would have the protection of life and property. After separating them, now we

should take a look at the conditions of the unbelievers who reside in *Dar al-Kufr*.

Tax Payers (*bajguzar*)

These are unbelievers who pay tax to the Islamic Government but have the freedom to implement un-Islamic laws in their country.

Though their country is *Dar al-Kufr*, but it is not *Dar al-Harb*. Since the Muslims gave them protection in return for tax, their state of belligerency (hostility) is invalidated. It is mentioned in the Quran:

فَإِنْ أَعْتَدُوكُمْ فَلَمْ يَقْاتِلُوكُمْ وَاللَّهُ أَعْلَمُ بِالشَّرْكَةِ فَمَا جَعَلَ اللَّهُ لَكُمْ
عَلَيْهِمْ سَبِيلًا ④

“So “if they remove themselves from you and do not fight you and offer you peace, then Allah has not made for you a cause [for fighting] against them”. (Surah Nisa:90)

Precisely on this basis, the jurists have explained that the lives, property and honour of these people cannot be usurped or forcibly taken.

وَإِنْ وَقَعَ الصَّلْحُ عَلَى أَنْ يُؤْدُوا إِلَيْهِمْ كُلُّ سَنَةٍ مِائَةً رَأْسَ قَانِتَ هَذِهِ
الْمَلَأَةِ الرَّأْمَنِ يُؤْدُونَهَا مِنْ أَنفُسِهِمْ وَأَوْلَادِهِمْ لَمْ يَصْنَعْ هَذَا لِأَنَّ الصَّلْحَ
وَقَعَ عَلَى جَمَاعَتِهِمْ فَكَانُوا جَمِيعًا مُسْتَأْمِنِينَ وَاسْتِرْقَاقَ الْمُسْتَأْمِنِ
لَا يَجُوزُ.

“And if there is an agreement to have peace on the condition that they would give 100 slaves every year and if those slaves belong to their own community or if they are their own children, then taking such slaves would not be right, because peace is applied to their entire community and they are all mustamin and making the mustamin as slaves is illegitimate”.

(Al Mabsoot of Imam Sarkhasi Vol 10 page 88).

وَلَوْ دَخَلَ مِنْهُمْ دَارَ حَزْبٍ أُخْرَى فَظَاهَرَ الْمُسْتَهْمَفُونَ عَلَيْهِمْ لَمْ يَتَعَرَّضُوا لَهُ
لَكُنَّهُ فِي إِمَانِ الْمُسْلِمِينَ -

"If anyone of them is residing in another Dar al-Harb and the Islamic army is to enter that country, then that person will not be attacked because he is under the protection of Muslims". (Al Mabsoot page 89)

وَإِنْ كَانَ الْجَيْشُ مُبْتَدِئُهُ فَهُمْ قَوْمٌ مِنَ الْمُسْلِمِينَ غَدَرُوا بِأَهْلِ الْمُوَادِعَةِ لَمْ
يَسْعِ لِلْمُسْلِمِينَ أَنْ يَشْتَرُوا مِنْ ذَلِكَ السَّبِيلِ وَإِنْ اشْتَرُوا رُدِّيَّتَ الْبَيْعِ
لَا هُمْ كَانُوا فِي إِمَانِ الْمُسْلِمِينَ -

"If the Muslims enslave these people through treachery, then it would be illegitimate for the Muslims to buy these slaves. And if they have already purchased, then that transaction would be rejected because they were under the protection of the Muslims". (Al Mabsoot page 97)

Although such type of unbelievers do reside among the enemy combatants,

لَا هُمْ بِهَذِهِ الْمُوَادِعَةِ لَا يَلْتَمِسُونَ أَحْكَامَ الْإِسْلَامِ وَلَا يَخْرُجُونَ مِنْ أَنْ
يَكُونُوا أَهْلَ حَرْبٍ -

(Al Mabsoot Vol 1 page 88⁹⁴)

but their wealth is not permissible and no invalid contract can be made with them even if it is interest based. But rather even if they are not in their own territory and are in such a territory which is practically a war-zone, even then it is not permitted for the Muslims to make an invalid (fasid) contract with them.

The People of Treaty (Muahedeen)

They are the unbelievers with whom *Dar al-Islam* has a treaty. The following Quranic statements are related to them:

⁹⁴ As it is not obligatory for them to follow the Islamic injunctions because of this pledge of protection, they continue to remain as "harbi" (combatants)

إِلَّا الَّذِينَ عَاهَدْنَا مِنَ الْمُشْرِكِينَ ثُمَّ لَمْ يَنْفُصُوا كُمْ شَيْئًا وَلَمْ يُظَاهِرُوا
عَلَيْكُمْ أَحَدًا فَأَمِّنُوا إِلَيْهِمْ عَهْدَهُمْ إِلَى مُدَّتِهِمْ

"Except those with whom you made a treaty among the polytheists and then they have not been deficient toward you in anything or supported anyone against you; so complete for them their treaty until their term".

(Sura Tauba : 4)

فَمَا اسْتَقَامُوا إِلَّا كُمْ فَاسْتَقِمُوا إِلَهُمْ

"So as long as they are upright toward you, be upright toward them. Indeed, Allah loves the righteous [who fear Him]".

(Surah Tauba : 7)

وَإِنْ اسْتَنْصَرُوكُمْ فِي الظَّالِمِينَ فَعَلَيْكُمُ التَّضَرُّرُ إِلَّا عَلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ
مِّيقَاتٌ هُ

"And if they seek help of you for the religion, then you must help, except against a people between yourselves and who is a treaty. And Allah is seeing of what you do".

(Surah Anfal : 72).

وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِّيقَاتٌ فَدِيَةٌ مُّسْلَمَةٌ إِلَى أَهْلِهِ

"And if he was from a people with whom you have a treaty - then a compensation payment presented to his family".

(Surah Nisa : 92)

It appears from these Quranic verses that although these unbelieving people of the treaty (*muahedeen*) are enemy combatants from ideological perspective and the term *Dar al-Harb* could be applied to their country and as long as the Islamic government has maintained relationships based on treaty, their lives and property are not permissible (to be usurped) and invading their life and property is forbidden according to the Shariah. If any Muslim kills someone from the *muahedeen*, the payment of blood-money is compulsory for the Muslim, and if he usurps someone's wealth, then he has to pay the liability. Since their wealth is not permissible in the first

place, then how could one make fasid (invalid) contracts with them (*muahedeen*) since its authorization is based on the principle of permissibility itself?

The Treacherous people (*Ahle Ghadar*)

These are the unbelievers who have a hostile attitude (towards Islam and Muslims) despite a (peace) treaty. The injunction of the Quran regarding them is:

وَإِمَّا تَنْخَافِقُ مِنْ قَوْمٍ بِخِيَانَةٍ فَأُنْبِدُ إِلَيْهِمْ عَلَى سَوَاءٍ

*"If you [have reason to] fear from a people betrayal, throw [their treaty] back to them, [putting you] on equal terms." (Surah Anfal :58)*⁹⁵

Shams al Aimma Sarkhasi states regarding this issue:

ولكن يتبين أن يثبت إليهم على سواء اي على سواء منكم ومنهم في العلم بذلك فعرفنا أنه لا يحل قتالهم قبل النبذ و قبل ان يتعلموا بذلك.

"Violating the treaty in this scenario is legitimate but it is necessary that the violation of the treaty be done with equality. That is, like you, it should be known to them too that you have declared the treaty to be null and void. We understand by this injunction that waging war without prior announcement and information is not lawful".

(Al Mabsoot, vol.10, pg. 87).

This verse and the above mentioned legal interpretation make it clear that even if the country with which the Islamic government has a peace treaty violates it, even then, their lives and property are not permissible till as time a formal declaration of war⁹⁶ is made.

⁹⁵ That is openly informing them about the end of the treaty so that they and you could be equal in this knowledge now that the treaty has ended.

⁹⁶ Only that situation is an exception to this rule when a nation at treaty openly violates the treaty and has clearly invaded our rights or has taken a

military action against us. In this situation, we have the right to make a preemptive strike against it. To lend support, the jurists of Islam derived proof from this act of the Prophet (pbuh) that when the Quraysh, in the case of Banu Khuza'a, openly violated the treaty of Hudaibiyyah, then the Prophet (pbuh) didn't see the need for notifying them about the annulment of the treaty and rather made a preemptive strike against Makkah. But in order to take advantage of this authorization, it is important to keep all those situations into consideration wherein the Prophet (pbuh) did not see the need to violate the treaty and the entire modus operandi must be followed which the Prophet (pbuh) had adopted in such a situation.

Firstly: The violation of the treaty from Quraysh's side was so clear that there was not any ambiguity in it. The people of the Quraysh themselves admitted it, that in reality they have committed the act of violating the treaty. Therefore, they sent Abu Sufyan to Madinah for the renewal of the treaty, which means that the treaty ceased to exist even in their sight. Hence, it is not necessary whether the acknowledgement of the violation of the treaty is from the violator itself, but it is necessary that the violation of the treaty is totally unambiguous.

Secondly: After the violation of the treaty, the Prophet (pbuh) did not do any such act either clearly or indicatively or even allusively which suggests that even after this violation, he still continued to hold the Quraysh to be a party of the treaty and maintained relations with them. All the narrations unanimously say that when Abu Sufyan came to Madinah for the renewal of the treaty, the Prophet (pbuh) did not accept it.

Thirdly: It was the Prophet (pbuh) who took open military action against the Quraysh. Not even an iota of fraudulence is found in the modus operandi of the Prophet (pbuh) that on the outside he used a peaceful approach but on the inside, he adopted a military strategy. This is an exemplary conduct on the part of the Prophet (pbuh) in this matter. Therefore if any action could be taken other than this injunction of the Quran

فَإِنْ يُبَطِّلُوْهُمْ عَلَىٰ سَوَاءٍ

"If you [have reason to] fear from a people betrayal, throw [their treaty] back to them, [putting you] on equal terms. Indeed, Allah does not like traitors". (Quran Anfal :58)

then it would only be in those conditions and only in that way in which the Prophet (pbuh) took the action.

Non-Treaty People (Ghair - Muhaiydeen)

They are the unbelievers with whom there is no treaty. This is a situation in which diplomatic relations have deteriorated to such an extent that war is considered to be inevitable. Severing the diplomatic relations actually means that the two nations are now free from the constraints of mutual respect and friendly relations. In this situation if one nation kills the people of the other or loots them, then the payment of blood-money or liabilities is not obligatory. In this sense it could be said that the lives and property of each other citizens have become permissible and it is now acceptable to grab, loot and kill each other. But no civilized government would like to spill human blood or loot them of their property and belongings without any formal announcement of war. The Islamic Law in this case is:

وَلَوْ قَاتَلُوكُمْ بِغَيْرِ دَعْوَةٍ كَانُوا أَثْبَتُنَّ فِي ذَلِكَ وَلَكُنُّهُمْ لَا يَضْمِنُونَ شَيْئًا
مِمَّا اتَّلَفُوا مِنَ الدَّمَاءِ وَالْأَمْوَالِ عِنْدَنَا۔

"And if the Muslims wage war against them without any invitation⁹⁷, then they would be sinners. But whatever destruction they would cause to their lives and property in such a war, in the sight of the Hanafi Law there is no obligation upon the Muslims to pay the liabilities for any of those things".

(Al Mabsoot, vol. 1, pg. 30)

Imam Shaf'ee says that the payment of liabilities would become obligatory because until they reject the invitation the sanctity and protection of their lives and property would remain.

But the Hanafis say:

⁹⁷ By invitation is meant ultimatum that either you make peace and treaty with us or pay Jizya or enter in to our nation by becoming Muslims. If none of the three scenarios is acceptable to you, then there is no other scenario except war between us and you.

ولكنا نقول العصمة المقومة تكون بالاحرز و ذلك لم يوجد في حقيقهم --- ولكن شرط الاباحة تقديم الدعوة قبدهونه لا يثبت و مجرد حرمة القتل لا يكفي بوجوب الضمان.

"The protection upon which the value of life and property rests, depends on being under the protection of Dar al-Islam and this thing is not present in their favour. It is true that the presentation of invitation (to accept Islam) is a condition for permissibility and permissibility cannot be proven without it, but merely prohibition of killing is not enough for the obligation of paying liabilities".

(Al Mabsoot page 30-31).

From this we come to know that the (enemy combatants not having any pledge of security and protection) *harbi* non-Muslims who are not *dhimmis* with whom there is no treaty, who live in a different territory, whose honour is not guaranteed by Islamic law, still their lives and their wealth are not lawful for us (Muslims) till as time we are able to present our complete mission and invitation of Islam to them and till as time there is no formal declaration of war between us.

The guidance that Prophet (pbuh) gave in this regards to Ma'az bin Jabal is worth considering:

لَا تَقْتُلُوهُمْ حَتَّىٰ تَدْعُوهُمْ فَإِنْ أَبَوُا فَلَا تَقْتُلُوهُمْ حَتَّىٰ يَنْدَأُوكُمْ فَإِنْ يَنْدَأُوكُمْ فَلَا تَقْاتِلُوهُمْ حَتَّىٰ يَقْتُلُوا مِنْكُمْ قَتْنَالًا ثُمَّ ارْوَهُمْ ذَلِكَ الْقَتْلَيْلَ وَقُولُوا لَهُمْ هَلْ إِلَىٰ خَيْرٍ مِّنْ هَذَا سَبِيلٌ فَلَمَنْ يَهِيَ اللَّهُ تَعَالَىٰ عَلَىٰ يَدِنِكَ خَيْرٌ لَكَ مِمَّا طَلَقْتُ عَلَيْهِ الشَّمْسُ وَغَرَبَتْ.

"do not fight them till you invite them (to Islam), and if they do not accept your invitation, still do not fight them till they begin the hostilities first, and do not fight them if they begin hostilities till they kill any one of you. Then show them the deceased tell them that will you not agree to something better than this (killing)? O Ma'az this teaching of patience and fortitude is because if Allah gives guidance (of Islam) to someone through your hands then it is far

better than that you gain control over all the land and wealth between the East and the West"

The Enemy Combatants (Muharibeen)

Now only those unbelievers are left who are (active participants and) directly at war with the Muslims. These are the real enemy combatants. It is their territory which is called "*Dar al-Harb*" according to the Islamic international law and it is their lives and property which are permissible (for Muslims). And the Shariah has legitimized killing, arresting, looting and beating them. But the intensity of their enmity in all the combatants is not the same and neither does all the war-booty come under one commandment (of the Quran)

Although the women, children, the sick and the old and infirm still qualify as enemy combatants, but the Shariah has not declared their blood to be lawful and has imposed restrictions in the permission to kill them.

انما يقتل من يقاتل - قال الله تعالى وقاتلهم والمفاعة تكون من
الجانبين -⁹⁸

The Shariah has divided the war money in to levels and every level has separate commandments.

The different levels of war booty and their injunctions

Although in principle, all the wealth and property in the enemy territory are permissible (i.e. liable to be confiscated) but the Islamic Shariah has classified them in to two:

1. *Ghanimah*.
2. *Fay*

⁹⁸ "Only those will be fought against who fight against us because Allah said "fight against them", and "fighting against" implies fight from two sides not one."

(Al Mabsoot Vol 1 page 64)

Ghanimah

Those movable assets on the battlefield which are seized by the Islamic army by the power of its weapons. One-fifth of its (i.e. *Khums*) belongs to the government and four-fifth belongs to those who have seized it. Imam Abu Yusuf defines “*ghanimah*” in his *Kitab Al Kharaaj* (Book of Tax) in this manner:

فَهَذَا فِيمَا يُصْنَبُ الْمُسْلِمُونَ مِنْ عَسَاكِرٍ أَهْلِ الشَّرِيكِ وَمَا أَجْلَبُوا بِهِ مِنَ
الْمَتَاعِ وَالسَّلَاحِ وَالكَرَاعِ.

“*Khums* refers to that wealth which is seized by the Muslims from the armies of the polytheists and these are from the assets, weapons and animals (i.e. movable assets)”. (p.10)

In another place he writes:

فَمَا أَصَابَ الْمُسْلِمُونَ مِنْ عَسَاكِرٍ أَهْلِ الشَّرِيكِ وَمَا أَجْلَبُوا بِهِ مِنَ الْمَتَاعِ
وَالكَرَاعِ وَالسَّلَاحِ وَغَيْرُ ذَلِكِ.

“Whatever is seized by the Muslims from the armies of the polytheists and which are from the assets, weapons and animals etc.”

It is evident from this, that the term “*ghanimah*” is applied only to those movable assets⁹⁹ that are seized by the Muslims from the enemy forces in war-like operations. Plundering and pillaging the general population which are beyond the boundaries of the armies is not correct in the sight of the Shariah. Although all the wealth of *Dar al-Harb* is permissible (liable to be confiscated) and neither any liability has to be paid if someone invades the properties of non-combatants nor the pillaged wealth will be returned back, but such kind of pillaging is disliked. It is obligatory for the leader of the Muslims to stop through every possible way such kinds of actions (looting and pillaging) because the Prophet (pbuh) has said:

مَنْ غَرَّ فَخْرًا وَرِيَاءً وَسَمْعَةً وَعَصَى الْأَمَامَ وَفَسَدَ فِي الْأَرْضِ فَإِنَّهُ لَمْ
¹⁰⁰
 يَرْجِعَ بِالْكَفَافِ

Fay

The second kind is of those movable and immovable assets are confiscated not from the armies of the enemy but which have come at the government's disposal as a result of the military victory over the enemy irrespective of the assets belonging to its citizens or the state. In the Islamic terminology such wealth is termed as "fay" and it is totally different from *ghanimah*.

وَغَنِيمَةُ الْعَسْكَرِ مُخَالِفَةٌ لِمَا أَفَاءَ اللَّهُ مِنْ أَهْلِ الْقُرَىِ وَالْحُكْمُ فِي هَذَا
¹⁰¹
 غَيْرُ الْحُكْمِ فِي تَلْكَ الْغَنَائِمِ۔

Concerning this, it is explained in Surah Al Hashr that it will not be put under the ownership of any person but rather it will be related to the *Bait-ul-Maal* (Public Treasury) and it will be spent over public works.

وَمَا آتَاهُ اللَّهُ عَلَى رَسُولِهِ مِنْهُمْ فَمَا أَوْجَفْتُمْ عَلَيْهِ مِنْ حَيْلٍ وَلَا رِكَابٍ وَلِكُنْ
 اللَّهُ يُسْلِطُ رُسُلَّهُ عَلَى مَنْ يَشَاءُ وَاللَّهُ عَلَى كُلِّ شَئٍ قَدِيرٌ ⑦

"And what Allah restored [of property] to His Messenger (pbuh) from them - you did not spur for it [in an

¹⁰⁰ 'whoever waged war for pride, show off and seeking name and fame and disobeyed the leader and spread disorder on earth, let alone receiving any reward he will be left in that very same condition'.

(Abu Dawood, Chapter: One who wages war and seeks the world)

¹⁰¹ "The wealth confiscated from the armies is 'ghanimah' and it is something else and the wealth of 'fay' is something else which is seized by the Muslims from the enemy population. Both have separate injunctions."

(Kitab Al Kharaaj)

expedition] any horses or camels, but Allah gives His messengers power over whom He wills, and Allah is over all things competent. (Surah Hashr:6).

There is no other meaning of *fay* than this and nowhere in the books of *fiqh* is there found any indication which says that it could be obtained individually and kept with the individual. At every place the words

فِي الْمُسْلِمِينَ . فِي بَوْضَعٍ فِي بَيْتِ مَالِ الْمُسْلِمِينَ فِي جَمَاعَةِ الْمُسْلِمِينَ

“*fay* is for the Muslims” or “*fay* shall be deposited in the Bait-ul-Maal of the Muslims” and “*fay* is for the Muslim community” and other such words are found from which it is known that the early scholars were familiar with the only *fay* which was owned by the society and which was at the disposal of the Islamic Government.

The Difference between *Ghanimah* And *Loot*

The right to obtain the *ghanimah* (i.e. spoils or booty taken in warfare) is only given by the Shariah to those who are under the protection of the Islamic State and who have the authorization from the leader of the Muslims officially in writing. Besides, if the Muslims are to plunder and pillage individually or by forming a group then they would be robbers. Their “spoils” would not be spoils but loot. That’s why Allah’s share (i.e. *Khums*) will not be accepted from it, but of course they would be allowed to have it because giving it back to the enemy is impossible anyway.

فَانْ كَانَ دُخُولُ الْقَوْمِ الَّذِينَ لَا مُنْعَةَ لَهُمْ بِغَيْرِ اذْنِ الْاَمَامِ عَلَى سَبِيلِ

التَّلَصِّصِ فَلَا خَمْسٌ فِيمَا اصَابُوا عَنْدَنَا وَلَكِنْ مِنْ اصَابَ مِنْهُمْ شَيْئًا

¹⁰² فَهُوَ لَهُ خَاصَّةٌ

¹⁰² “And if such people who have no authorization from the Government and without its permission were to irresponsibly enter the territories of the enemy and pillage

Take a look at the reason ‘Allama Sarkhasi has written regarding it:

والمفنى مائتى أن الغنائم إسمٌ لا مصاب باشرف الجهات وهو ان يكون فيه اعلاه كلمة الله تعالى واعتزاز الدين ولهذا جعل الخمس منه الله تعالى ومنذ المفنى لا يحصل فيها ياخذه الواحد على سبيل التلاصص فيتم حض فעה اكتساباً للمال۔

“Actually the thing is as we have stated before that ‘ghanimah’ refers to that wealth which is confiscated through extremely pure and noble way which involves the making the word of Allah supreme and His religion empowered. That’s why a fifth portion of it is reserved for Allah. This thing is not found in the wealth which a person obtains like thieves because his aim is merely the earning of wealth”.

(Al Mabsoot vol.10, pg. 74).

As an example, Imam Sarkhasi presents that Hadith in which it is mentioned that the polytheists captured a Muslim boy. After a period of time the boy escaped from them and stole some of their goats. The Prophet (pbuh) allowed those goats to remain with him and agreed to receive *Khums* from it. The incident of Mugheera bin Shu’ba also is in its support. He came to Medina by robbing the wealth from his companions and accepted Islam. When he offered the robbed wealth to the Prophet (pbuh) the Prophet (pbuh) said that your Islam is accepted but this wealth is not.

Ownership rights of the unbelievers in Dar al-Harb

The third constraint which is imposed on the spoils of war is that as long as the ones who plunder reside in *Dar al-Harb*, they cannot take advantage from the spoils. Only eating and

their wealth, then no Khums will be exacted from them on our part, rather that wealth will be specific only to them”.

(Al Mabsoot, vol.10, pg. 74).

drinking stuff are the exception to this constraint. Thus during war, whatever supplies are obtained by the armies, the combatants can take from it only as much as is needed. Except this, the entire spoils will be deposited with the leader of the army and it will not be distributed among the ones who plunder until it is moved to *Dar al-Islam*. The reason for this is that according to the Hanafi law, as long as the spoils remain in *Dar al-Harb*, the ownership of ones who plunder is not fully established. Imam Shafi's opinion is against this. He says that the wealth of the enemy combatants is permissible and hence the moment the Islamic army seizes it, from that moment itself they become its owners. But Imam Abu Hanifah and his companions say that this ownership is not authentic. Although we have seized it, still the territory belongs to them. Until the wealth is moved from their territory to ours we cannot be its absolute owners. Imam Sarkhasi makes clear the Hanafi position in this matter:

فاما عندنا الحق يثبت بنفس الاخذ ويتأكد بالاحراز ويتمكن بالقسمة
 كحق الشفيع يثبت بالبيع ويتأكد بالطلب ويتم الملك بالاخذ و مادام
 الحق ضعيفاً لا تجوز القسمة ... بالاخذ يملك الاراضي كما يملك
 الاموال ثم لا يتأكد الحق في الارض التي نزلوا فيها اذا لم يصيرها
 دار الاسلام.

"In our view, by seizing itself, the right to expend is proved, by taking it to Dar al-Islam it becomes strong and by the distribution of the spoils it is completed. It is similar to preemption that the right of the preemptor is proved by business transaction, it is confirmed by demand and is completed by possession. So as long as the right remains weak, distribution is illegitimate. As just ownership of the movable property is proved by possession itself, in the same way ownership of immovable property is proved too by possession itself. But the land upon which the Muslim forces have landed, its right to possession is not established entirely until it is made in to Dar al-Islam".

(Al Mabsoot, vol.10, pg.33).

It is evident from this clarification that not only '*ghanimah*' but even in '*fay'*, the Islamic Government does not have complete right of exploitation until the occupied territory is made in to *Dar al-Islam* or in modern terms, a formal announcement of annexation of the occupied territories is made. The conduct of the Prophet (pbuh) too supports this method. Therefore Makhool says that

ما قسم رسول الله صلى الله عليه وسلم الغنائم إلا في دار الإسلام

"The Prophet Muhammad (pbuh) did not distribute the spoils to in any place except Dar al-Islam".

It is narrated by Muhammad bin Ishaaq and Kalbi that the Prophet (pbuh) distributed the spoils of Hunayn while returning to Medina in Ja'arrana which was at that time located at the borders of *Dar al-Islam*. On the way back, the Bedouins made such a strong demand for the distribution of spoils and disturbed him to such an extent that his blanket got torn, but despite this commotion he did not distribute even a grain of the spoils before reaching the limits of *Dar al-Islam*.

Ponder over this conduct of the Prophet Muhammad (pbuh) and the explanations of these jurists. The obvious reason for such conduct is: just as the Islamic Law recognizes the rights of ownership of the people of Islam over the Islamic territories and possessions, in the same way, it even recognizes the ownership rights of the enemy combatants over non-Islamic territories. Although war makes their wealth permissible for us, but the Shariah has not given a blanket and unconditional authorization to take advantage from this permissibility, but rather has determined few standards and legal hurdles for the transfer of the property from their ownership to ours. And these are such types wherein there is total equality between us and them. Hanafi Law says that we become the owners of their wealth only when we seize it in a formal war and move it to our territory. In the same vein, they too would become the owners of our wealth if in a formal war, if they were to seize it and bring it to their territory. Thus it is

obligatory for us to respect their ownership rights in their own territory. In this connection more explanations of the jurists are worthy of consideration.

نفس الاخذ سبب ملك المال اذا تم بالاحراز وبيننا وبينهم مساوات في اسباب اصابة الدنيا بل حظهم اوفر من حظنا لأن الدنيا لهم ولانه لا مقصود لهم في هذا الاخذ سوى اكتساب المال ونحن لا نقصد بالاخذ اكتساب المال

"When the wealth is moved to the Islamic territory after its occupation, then it completes the reason for the right of the ownership of that wealth. There is a complete equality between us and the unbelievers in obtaining the wealth of the world but rather their portion in this world is a little more than ours because this world is everything for them. And by possessing wealth, their purpose is nothing but obtaining wealth and in contrast to this our purpose is not to obtain wealth". (Al Mabsoot, vol.1, pg.53)

واذا دخل المسلم دار الحرب بامان وله في ايديهم جارية ماسورة كرهت له غصبيها وطيبة لانهم ملوكها عليه والتحقت بسائر املاكهـ

"If a Muslim were to enter Dar ul-Harb by seeking protection and if he is to get his own slave-girl back who was captured by the unbelievers, then confiscating her and having sex with her is not legitimate for him because now the unbelievers are her owners and that slave-girl is now included in the rest of their possessions".

(Al Mabsoot Vol 1 page 65).

ولوخرج اليها بامان ومعه ذائق المال فانه لا يتعرض له فيهـ

"And if a combatant unbeliever was to come amongst us by seeking protection and has the wealth robbed from us, then we cannot snatch away it from him".

(Al Mabsoot vol 1 page 63).

فإن غلب العدو على مال المسلمين فاحرزوه وهناك مسلم تاجر مستأمن حل له ان يشتريه منهم فيأكل الطعام من ذلك ويقطأ الجارية

لأنهم ملوكها بالاحراز فالتحقت بسائر املاكهم ومذاي خلاف ما تدخل اليهم تاجر بامان فسرق منهم جارية واجرها لم يحل للمسلم أن يشتريها منه لانه احرزها على سبيل الغدر وهو مامر بردهما عليهم فيما بينه وبين ربه وإن كان لا يجبره الإمام على ذلك.

"If the enemy is to bring the wealth seized from the Muslims into their territory and there is a Muslim businessman there staying as mustamin, then it is lawful for him to buy and utilize that wealth and he could even have sex with the slave-girl bought from them. Because after bringing her into their territory, they become her owners and now she is included in their property. As against this, if a Muslim businessman is to go to Dar al-Harb by seeking protection and steals a slave-girl from their possessions and brings her to Dar al-Islam, then it is not lawful for a Muslim to buy that slave-girl because she is brought by treachery and on the basis of 'whatever is between him and his Lord' he is supposed to return her back to them although the leader cannot allow him to return her back". (Al Mabsoot vol 1 page 61).

This conduct is exactly according to the Hadith. On the day of the victory of Makkah, when 'Ali asked the Prophet (pbuh) that why does not he stay in his former residence which belonged to him before migration? To that the Prophet (pbuh) replied: 'هل ترك لنا عقيلاً من ربع' 'Did 'Aqeel leave us even a quarter?' It means that when he left the house and 'Aqeel bin Abu Talib occupied it, then his ownership became null and void and 'Aqeel's ownership got established. Now despite the fact that he has now conquered Makkah, he refused to acknowledge his former residence as his own on the basis of his former rights of ownership.

The Essence of the Last Debate

All these legal explanations are before you. We can infer about the following issues upon reflection.

1. If *Dar al-Harb* is taken as *Dar al-Kufr* (foreign territory) then its wealth is not permissible but merely unprotected and the result of non-protection is only to the extent that the Islamic Government is not responsible for the protection of any life or property in that territory. If a Muslim causes any damage to the life and property of another Muslim or if he takes away anything from the country by dishonest ways, then it is between Allah and him. The Islamic Government would not call him to account.
2. If the meaning of *Dar al-Harb* is taken as a place of unbelievers whose lives and properties are permissible, then it means every *Dar al-Kufr* is not *Dar al-Harb* rather only that part is actually *Dar al-Harb* which is at war with *Dar al-Islam*. Except this specific kind of *Dar al-Kufr* no civilians of other *Dar al-Kufr* are permitted to be killed and their wealth usurped even though they are not *dhimmis* and their lives and properties are unprotected.
3. If Muslims are practically at war with some country, then the lives and properties of the people of that country are not so absolutely permissible that every person is to plunder and pillage it and is free to occupy the properties of the unbelievers. Rather even for that, there are some conditions and constraints.
 - A. The leader of the Muslims declares that country to be a *Dar al-Harb* by making a formal announcement of war.
 - B. The people fighting there are backed by the “permission” and “support” of the leader.
4. Only that movable property is called as *ghanimah* which is obtained by fighting against the armies of the enemy. Or in other words, it is obtained through the best possible means which includes the honour of religion. Fifth portion of that wealth belongs to Allah.

5. Those movable and non-movable assets are called “fay” which comes under the Islamic Rule as a result of military victory. Tax and wealth obtained by way of treaty is not even counted in fay. But its ownership completely belongs to the Islamic Government and no special person has any rights to claim ownership.
6. The victorious would get the rights to own the wealth of *ghanimah* and *fay* only when they move it from *Dar al-Harb* to *Dar al-Islam* or convert *Dar al-Harb* in to *Dar al-Islam*. Before that, utilizing the wealth and taking benefits from it is disliked.
7. Islamic Law approves the ownership rights of the unbelieving enemy combatants over their wealth and could legitimately transfer their wealth in those scenarios which are made lawful by Allah and His Messenger (pbuh) i.e. either business transaction or truce or war.

The status of Muslims according to territory

After thoroughly examining these issues let us have a look at the factors that the Islamic Law bases its differences amongst Muslims because of the accepted difference in the status of various territories. The foundation of all the laws in this chapter is based on the following verses and the Hadith:

وَالَّذِينَ آمَنُوا وَلَمْ يُهَاجِرُوا مَا لَكُمْ مِنْ وَلَا تَعْهُدُ مِنْ شَيْءٍ حَتَّىٰ يُهَاجِرُوا

“And those who believed but did not migrate (to Dar al-Islam), you are under no obligation of alliance unless they migrate.” (Surah Anfal :72)

فَلَا تَنْخِذُوا مِنْهُمْ أُولَئِكَاءَ حَتَّىٰ يُهَاجِرُوا فِي سَبِيلِ اللَّهِ

“Do not, therefore, take from them allies until they emigrate in the way of Allah”. (Surah Nisa :89)

وَمَنْ قَتَلَ مُؤْمِنًا خَطَا فَتَخْرِيرُ رَقْبَةٍ مُؤْمِنَةٍ وَدِيْنُ مُسْلِمَةٍ إِلَىٰ أَهْلَهُ إِلَّا أَنْ

يَضَدُّ قُوَّةٍ فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٌّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَخْرِيرُ رَقْبَةٍ مُؤْمِنَةٍ

وَإِنْ كَانَ مِنْ قَوْمٍ بَيْتَكُمْ وَبَيْتَهُمْ فَلِيَقُولُ مُسْلِمٌ إِلَى أَهْلِهِ وَلَا يُرِيْدُ
رَقْبَةً مُؤْمِنَةً

"And he who has slain a believer by mistake, his atonement is to set free from bondage a believing person and to pay blood-money to his heirs, unless they forgo it by way of charity. And if the slain belonged to a hostile people, but was a believer, then the atonement is to set free from bondage a believing person." (Surah Nisa :92)

قال النبي صلى الله عليه وسلم انا بر اهل مسلم اقام بين اظهر المشركين - وعن النبي صلى الله عليه وسلم ايضاً من اقام مع المشركين

فقد بريث منه الذمة او قال لاذمة له -

The Prophet (pbuh) said: "I am free ¹⁰³from the responsibility of that Muslim who lives among the polytheists". And it is also reported from the Prophet (pbuh) that: "whoever resided with the polytheists, I am free from his responsibility or said there is no responsibility for him".

It is mentioned in Book of Jihad by Abu Dawood that whenever the Prophet used to appoint someone as the commander-in-charge of a certain battalion, along with other instructions, he used to instruct them this too that:

ادعهم الى الاسلام فان اجابوك فاقبل منهم وكف عنهم، ثم ادعهم الى التحرك من دارهم الى دار المهاجرين واعلمهم انهم ان فعلوا ذالك ان لهم ما للمهاجرين وان عليهم ما على المهاجرين فان ابوا واختاروا دارهم فاعلمهم انهم يكونون كالعرب المسلمين يجري عليهم حكم الله الذى كان يجري على المؤمنين ولا يكون لهم في الفئ والغنية نصيب الا ان يجاهدوا مع المسلمين

¹⁰³ The word " I " refers to his status as the ruler of the Islamic nation and not as a Prophet. What he (pbuh) stated means that the Islamic government is not responsible for the protection of such a Muslim.

"First invite them towards Islam. If they accept it, then stop your hands from them. Then tell them to leave their territory and come to the territory of the Muhajirs (emigrants) i.e. Dar al-Islam and tell them that if they do so, then they would have the same rights as the Muhajirs and those very obligations would be upon them as that of the Muhajirs. If they refuse and prefer to stay in their own territory, then inform them that their status would be that of the Bedouin Muslims. All the injunctions of Allah would be enforced on them as enforced on the Believers. But they would not have a share in fay and ghanimah except if they fight alongside the Muslims".

(Chapter: Concerning Invitation To The Polytheists)

We will state in brief the laws derived by the Hanafi jurists from these verses and the Hadith.

1. The Muslims of Dar al-Islam

The protection of only those lives and properties is the responsibility of the Islamic Government which lie within the limits of *Dar al-Islam*¹⁰⁴. Not only from worldly perspective but also from religious perspective, all the laws of Islam would

¹⁰⁴ In the early years when all the Islamic territories were under one single Government, Dar-ul-Islam was synonymous with the state boundaries of the Caliph of Islam. But the principles on which the constitutional law of Islam is founded are such that when the Dar-ul-Islam got disintegrated, then automatically the concept of common wealth emerged. In whichever part the Islamic territory might be and under whichever ruler it might be, in any case it is a part of Dar-ul-Islam. And every Muslim, wherever he might have born, automatically becomes the citizen of Dar-ul-Islam as soon as he enters it and receives all the rights of citizenship provided he is not related to any Dar-ul-Kufr as its citizen. Whether present day Islamic Governments act upon it or not, but in accordance with the Islamic Law no Muslim is a non-National of any Islamic Government. The rights and obligations of an Afghan should be the same in Iran and Turkey as in Afghanistan and it should never be necessary for a Muslim that when he moves out from the limits of one Islamic Government and enters the limits of another, he is forced to adopt some artificial means for becoming its citizen. Every Muslim is a born citizen of Dar-ul-Islam.

be enforced on those Muslims who would be the citizens of *Dar al-Islam*. And they would in all respects be obliged to obey these laws. This rule is from the holistic rules of Islam and many issues branch out from it.

- (i) On the basis of this very rule is the issue that the protection of lives, properties and honour is only meant for those Muslims who are under the protection of *Dar al-Islam*. Other than them, the protection to other Muslims (not residing in the geographic boundaries of *Dar al-Islam*) is merely religious; it is not an institutionalized protection on the basis of which the Shariah verdicts become obligatory and enforceable.

كما قال السرخسي في كتابه المبسوط العصمة المقومة تكون بالاحراز

(vol.10, pg.30).

And

واعصمة بالاحراز والاحراز بالدار لا بالدين

(ibid. pg.53).

- (ii) From this very rule comes this issue too that the Muslims of *Dar al-Islam*, both in religious and legal capacities would be stopped from those actions which are declared unlawful by the Islamic Law. But those Muslims who are not in *Dar al-Islam*, their case is between them and Allah. If there is any respect for religion, then they would abstain or else can do whatever they want because Islam does not have the right to enforce laws on them.
- (iii) This very rule is also the source of the issue that the lives and properties that remain under the protection of *Dar al-Islam* are under complete protection and hence except for the Shariah-based rights, they would not be allowed to be violated by anybody. There is no discrimination between a Muslim and a non-Muslim in this regard. Every person who has submitted himself to the laws of Islam would be prevented from violating them irrespective of him being a Muslim or a non-Muslim. And the life and property of

every such person would be protected by *Dar al-Islam* irrespective of him being a Muslim or a non-Muslim.

لأن الدين مانع ملئ يعتقد حقا للشرع دون من لا يعتقده وبقوة الدار

يمنع عن ماله من يعتقد حرمته ومن لم يعتقده

(Al Mabsoot, vol.14. pg.58).

Thus on this basis we may say that a Muslim is a Muslim and even a *dhimmi* is both a Muslim and a *dhimmi* in *Dar al-Islam*. And no enemy combatant *mustamin* could conduct business on interest or make any of the fasid (invalid) contracts because the wealth of everybody is protected from everyone and they could be taken away by only those ways that are legally sanctioned by the Islamic Law.

فإن دخل تجار أهل الحرب دار الإسلام بامان فاشترى أحدهم من
صاحبه درهما بدرهمين لم اجز ذالك الا ما اجزيه بين أهل الإسلام
وكذاك أهل النمة اذا فعلوا ذلك لأن مال كل واحدٍ منهم معصوم
متقوّم-

(Al Mabsoot Vol 14 page 58)

Similarly, if an unbeliever comes to *Dar al-Islam* from *Dar al-Kufr* or an enemy combatant unbeliever enters the Islamic country from *Dar al-Harb* by taking protection then charging him interest or conducting business with him through invalid contracts is not legitimate because honouring the protection granted by the Islamic Government is obligatory for all its citizens. However if an enemy combatant is to enter *Dar al-Islam* without protection, then arresting, beating, robbing him and conducting business with him by invalid contracts are perfectly legitimate in the sight of Imam Abu Hanifah and Imam Muhammad because his blood and wealth are now permissible. But Imam Abu Yusuf considers even this to be illegitimate.

2. Muslim Mustamins In *Dar al-Kufr* And *Dar al-Harb*

The citizen of *Dar al-Islam* who temporarily goes to *Dar al-Harb* by taking guarantees of protection is called a

"mustamin" (i.e. one who seeks protection and security) in the Islamic terminology. Although this person, owing to being outside the jurisdiction of the Islamic Government becomes free from our national Law, but even then, to a certain extent he does have the protection of the Islamic Government and the responsibility of obliging to the Islamic injunctions would not become totally null and void.

It is mentioned in Hidayah

العصمة الثابتة بالاحراز بدار الاسلام لا تبطل بعارض الدخول بالامان

"The protection which one has does not become null and void just because of taking temporary guarantee of peace and security". (Kitab Al Seer, Chap. Mustamin)

Following issues branch out on the basis of this rule:

- (i) The *Dar al-Kufr* with which *Dar al-Islam* has a treaty, there it would be illegitimate for a Muslim *mustamin* to conduct business via *fasid* (invalid) contracts because the blood and wealth of the unbelievers of that country are not permissible. And since the legitimacy to make *fasid* (invalid) contracts is based on permission, hence with the lifting of permission that would automatically be lifted as it is based on that.
 - (ii) If a Muslim *mustamin* is to conduct business through *fasid* (invalid) contracts in a *Dar al-Kufr*, or violate a pact, or bring something from that country through theft or cheating then the Islamic Government would neither prosecute him nor is he supposed to pay any bail¹⁰⁵. However, from religious perspective, he would be advised to regress from all those acts which he has committed against the Shariah.
 - (iii) Except for the *fasid* (invalid) contracts, in all the other matters, the Hanafi *fiqh* states the same injunctions

¹⁰⁵ This is only in those scenarios when there isn't any stipulation in the treaty. It means that under the Islamic Law, that Muslim will not be prosecuted merely on the basis of that act itself. Prosecution could be done only under the stipulations of that treaty or on that basis which we have already stated before.

even for that *mustamin* who has entered *Dar al-Harb* by taking *amaan*.

لودخل اليهم تاجر بامان فسرق منهم جارية واخرجها فهو مامور

بردها عليهم فيما بينه وبين الله وان كان لا يجبره الامام على ذالك.

"If a businessman were to go to Dar al-Harb by taking amaan and steal a slave-girl from them, then on the basis of 'whatever is between him and Allah', he is obliged to return her back although the leader cannot force him to do that".

(Al Mabsoot, vol. 1. Pg. 61)

واذا دخل المسلم دار الحرب بامان فدابنهم او دابنوه او غصبهم او غصبوه

لم يحكم فيما بينهم بذلك وانما ضمن المستامن لهم ان لا يخونهم وانما

غدر بامان نفسه دون الامام فيفقى بالردد ولا يجبر عليه في الحكم.

"If a Muslim were to enter Dar al-Harb by taking protection and takes a loan from them or they take loan from him or he usurps their wealth or they usurp his wealth, then the matter rests between them and will not be decided in Dar al-Islam. The mustamin himself took the responsibility for not committing any treachery. Now when he did commit treachery, then this treachery is not done under the leader's treaty but his own personal treaty and hence a fatwa would be issued asking him to return the wealth, but officially he would not be forced to do so".

(ibid p.95).

[*Imam Abu Yusuf disagrees with this because he declares a Muslim to be obliged to follow the injunctions of Islam*].

If a Muslim *mustamin* kills someone in *Dar al-Harb* or causes damage to his property, then no action would be taken against him in *Dar al-Islam*, however according to his religion, committing such an act would be illegitimate.

واكره للمسلم المستامن اليهم في دينه ان يغدر بهم لأن الغدر حرام
(ibid).

If Muslim *mustamin* brings the wealth from *Dar al-Harb* to *Dar al-Islam* by either usurpation or stealing, then buying such wealth is disliked for a Muslim, but if he is to buy it, then his transaction would not be rejected because in itself, legally

there is nothing wrong in selling and buying. However, since the wealth is acquired through treachery, the Muslims are religiously obliged to return it.

والنهى عن الشراء منه ليس لمعنى عين الشراء فلابيمنع جوازه ومنها
الكرامة لمعنى الغدر وكان ماموراً برد ما عليهم ديناً

(*ibid p.97*)

(iv) A Muslim *mustamin* can take interest, gambles, sells alcohol, pork and carcass to them and can earn wealth by all those ways which are considered permissible by the enemy combatants themselves in *Dar al-Harb*. This is the doctrine of Imam Abu Hanifah and Imam Muhammad. Imam Abu Yusuf disagrees with this. The arguments of both the parties as transmitted by Imam Sarkhasi are worthy of consideration:

“Dealing in interest or cash loan with the enemy combatants or selling alcohol, pork and carcass to them are legitimate in the sight of Abu Hanifah and Muhammad, but illegitimate in the sight of Abu Yusuf.

The argument of Imam Abu Yusuf is that a Muslim is obliged to follow the injunctions of Islam wherever he might be and such type of matters are from the injunctions of Islam. Don't you see that it would be illegitimate if such a deal is made with a non-Muslim enemy combatant in our territory. Thus, when it is not permissible here (in *Dar al Islam*), then it has to be illegitimate in *Dar al-Harb* too.”

In response to this argument, both the aforesaid Imams say that this is with respect to taking the enemy's wealth with his permission and its essence is that their wealth is permissible for us. The *mustamin* has taken the responsibility only to the extent of not betraying them. But since he took the wealth through these contracts, he saved himself from treachery and got saved from prohibition in such a way that he took this wealth not through business deal but on the basis of permission. As to the question of an enemy combatant *mustamin* in *Dar al-Islam*, then it is different because his

wealth is protected due to *amaan* and hence cannot be taken on the basis of permissibility. (Al Mabsoot, vol. 1, pg. 95)

"Imam Abu Hanifa said that when it is lawful for the Muslims to rob the enemy combatants and confiscate their wealth, then it should be lawful to the highest degree to take their wealth with their own wish and will. It means they have no refuge beyond the limits of the Islamic army, therefore seizing their wealth by any possible means is legitimate for the Muslims." (Al-Mabsoot, vol.1, pg. 138)

"Imam Abu Yusuf says that since Muslims are from the people of Dar al-Islam, they are prohibited from Riba at every place on the basis of the injunctions of Islam. The explanation for committing this act is not correct that he is taking the wealth of the unbelievers with good intentions, but rather he is taking that wealth in a special situation, because if that special situation (i.e. fasid (invalid) contract) is not there, then the unbelievers would agree to give their wealth in another situation - if this is considered to be legitimate in Dar al-Harb, then it would also be legitimate among the Muslims in Dar al-Islam that a person can take two dirhams for one and name the other dirham as gift." (Al-Mabsoot , vol.14, pg. 58)

Our aim is not to make a comparison of the two statements. We only want to say that from the above mentioned statements of Imam Abu Hanifa and the other issues of his doctrine which we have mentioned before, four points get clearly proven:

1. Firstly, this matter is legitimate to only that Muslim who is a citizen of *Dar al-Islam*, and had gone to *Dar al-Harb* by taking *amaan*.
2. Secondly, this transaction could be made with those enemy combatant unbelievers whose lives and properties are permissible.
3. Thirdly, the wealth obtained by this way would not be "*ghanimah*". Because, neither it is obtained in noble ways, nor does it involve the supremacy of religion and there is no reservation for *Khums*. Rather, it is just

earning of wealth. Similarly, it is not "fay" too. Because fay is owned by the Government of Islam and this wealth is taken by this person himself and he does not deposit it in the Bait-ul-maal (Public treasury).

4. Fourthly, acquiring the wealth of the people in this way falls under the category of those actions which require explicit legal authorization, rather it falls under those actions that require the highest levels of authorization and its legal status is that if a Muslim happens to acquire the wealth in this manner then in the opinion of Abu Hanifah even religiously a *fatwa* would be issued against him to return that wealth. As for the wealth obtained through treachery, although legally he would not be forced to return that wealth, but religiously he would be told to return it.
5. Fifthly, just as a Muslim *mustamin* can do business with the unbelievers through *fasid* (invalid) contracts in *Dar al-Harb*, so too he is authorized to do business with the Muslims of that country in similar ways, because even their wealth too is permissible. We have already mentioned its references before and the discussion too will be coming in the following pages.

3. The Muslim Citizens of Dar al-Kufr And Dar al-Harb

Those Muslims who reside in *Dar al-Kufr* and do not migrate to *Dar al-Islam* are outside the protection of Islam. Although religiously, they are bound to obey all the injunctions of Islam and follow the *hudood* (limits) of the lawful and the unlawful, but Islam is free from their responsibility and as explained by the Prophet (pbuh) himself. They would not have any share in *ghanimah* and *fay*, as it is clearly mentioned in the Hadith. And from worldly perspective, their lives and properties are unprotected because they do not have the fundamental protection (by not residing in the geographic boundaries of *Dar al-Islam*). If such Muslims are from the "enemy combatant" nation, then their lives and wealth become virtually permissible. Due to this reason, never mind enforcing

Qisaas to their killers, there is even no blood-money to be paid for his killing. Rather, in some situations, even there is not expiation. In this case, we shall now present few statements of the jurists as is from which you yourself would come to know the legal status of the Muslim citizens of the *Dar al-Harb*:

لا قيمة لدم المقيم في دار الحرب بعد اسلامه قبل الهجرة اليها---

اجروه اصحابنا مجرى الحرب فى اسقاط الضيمان عن متلف ماله ---

ماله كمال الحرب من هذا الوجه ولذاك اجاز ابو حنيفة مباعته على سبيل ما يجوز مباعحة الحرب من بيع الدرهم بالدرهمين في دار الحرب.

"The person who does not migrate after becoming a Muslim and resides in Dar al-Harb, there is no value to his blood...our fellow jurists have declared him to be a combatant in the capacity that there would not be any liability on the one who damages his property...in this respect his property is like the property of a combatant. That is why Imam Abu Hanifah has declared that form of purchasing and selling to be legitimate which is done with a combatant i.e. selling a dirham for two in Dar al-Harb i.e. interest."

(*Ahkam Al Quran of Jassas Al Hanafi*, vol.2, pg. 297)

من في دار الحرب في حق من هو في دار الاسلام كالموتى

"The person who resides in Dar al-Harb is like a dead person for the one residing in Dar al-Islam"

(*Al Mabsoot Vol I page 64*)

ان ترميوا باطفال المسلمين فلا يامن بالرمي اليهم وان كان الرأى يعلم

انه يصيب المسلم --- ولا كفارة عليه ولا دية.

"If the enemy combatants use the children of Muslims as shields, then there is nothing wrong in targeting them, even though the one who is making the target knows that he is targeting the Muslims...he is neither obliged to pay blood-money nor expiation". (ibid p.65).

و اذا سلم الحرب في دار الحرب ثم ظهر المسلمون على تلك الدار ترك

له ما في يديه من ماله و رقيقه و ولده الصغار --- فاما عقاره فانها

تصير غنيمة للمسلمين في قول ابى حنيفة وعمر وقال ابو يوسف
استحسن فاجعل عقاره له.

"If an enemy combatant becomes a Muslim in Dar al-Harb and then the Muslims are to conquer his territory, then his wealth, slaves and under age children would be set free...but his immovable property would become ghanimah for the Muslims. This is the opinion of Imam Abu Hanifah and Imam Muhammad. Abu Yusuf says that as a favour, I would allow even the immovable property to remain with him. (ibid p.66)."

واكره للرجل ان يطأ امته او امراءاته في دارالحرب مخافة ان يكون له
فيها نسل لا نه ممنوع من التوطن في دارالحرب ... واذا خرج ربما
يبقى له نسل فتيخلق ولده بأخلاق المشركين.

"Imam Abu Hanifah says that: 'I even dislike a person having sex with his slave-girl or wife in Dar al-Harb... There is fear of his generation being born there. Because it is forbidden for the Muslims of Dar al-Harb, their country...and also for the reason that if he exits it and leaves his generation there, then his children would adopt the morals of the polytheists.' (ibid p.58)."

The last thing which we state with all sincerity in this connection is that in the opinion of the Great Imam (Abu Hanifa), taking interest from each another is disliked for Muslim citizens of *Dar al-Harb*, but if such a transaction is made, then it would be accepted and not rejected. But Imam Muhammad has disagreed with this opinion of Imam Abu Hanifa and his argument is that the wealth of both the Muslims is not protected against forceful confiscation ¹⁰⁶(as they live in *Dar al-Harb*) and if Muslims, in the scenario of conquering that country, cannot declare their wealth to be *ghanimah*, then what right do these two Muslims have in taking each other's wealth as *ghanimah*? But from the legal argument put forth by Imam Abu Hanifah to support his opinion, his deep

¹⁰⁶ It means that the wealth of a Muslim cannot become that of another Muslim merely because he has managed to somehow take it from him.

understanding of the complicated and delicate differences in the legal positions becomes apparent. We shall replicate his opinion verbatim as it throws light on a very important issue of the principles of law. He says:

بالياسلام قبل الاحراز ثبت العصمة في حق الامام دون احكام الا ترى
ان احدهما لو اتلف مال صاحبه او نفسه لم يضمن وهو اثم في ذلك
وانما ثبتت العصمة في حق الاحكام بالاحراز والاحراز بالدار لا بالدين
لان الدين مانع لمن يعتقد حقا للشرع دون من لا يعتقد وبيقوع الدار
يمعن عن ماله من يعتقد حرمته ومن لم يعتقد فثبتت العصمة في
حق الا ثم قلنا يكون ربها هذا الضبع ولعدم العصمة في حق الحكم
قلنا لا يومر ان يرد ما اخذه لان كل واحد منهمما انما يملك مال
صاحبها بالآخر

"The protection that is offered by Islam to someone just by coming under its fold before he comes under the protection of Dar al-Islam is only related to the rights of the leader but not its injunctions. Don't you see, if any of these two Muslims is to encroach upon the life and property of each other, then there would not be any liability for him, whereas he would be a sinner (in the eyes of Allah and by the religious law of Islam) by committing such an act. Actually protection under the law is guaranteed only when one resides within the geographic boundaries of Dar al-Islam and this protection is because of the territory and not religion. As per Shariah, religion can forbid only those who believe in it and cannot forbid those who don't. In contrast because the power of dominion over the territory, a person would be protected against both who religiously believes something to be prohibited and also against the one who doesn't. Thus, the protection which is established due to the act being a sin (in the eyes of Allah) on that basis we have said that no order can be given forcing him to return the wealth obtained because one of them who confiscates the wealth of the other, becomes its owner merely by means of its possession."

(Al Mabsoot, vol.14, pg.58)

Here, Imam Abu Hanifah has indicated towards the three domains of Islamic Law. According to the religious law, the property of a Muslim irrespective of it being in *Dar al-Islam* or *Dar al-Kufr* or *Dar al-Harb* is in any case protected and the result of this protection is that the one who would usurp wealth or property and make a *fasid* (invalid) contract will go against the Shariah and would be a sinner. In accordance with the constitutional law, the protection which the wealth of an unbeliever enjoys in *Dar al-Islam*, would not be available to a Muslim living in *Dar al-Kufr*. Hence if another Muslim of *Dar al-Kufr* usurps the wealth of a fellow Muslim from *Dar al-Kufr* then he would be a sinner in the sight of Allah but in the real world, no Islamic injunction would be enforced on him (he would not be punished). In the perspective of international law, the Muslim living among the unbelievers is their partner as per the traditional rights and obligations and hence he too would become its owner merely by seizing the wealth just like the unbelievers. Thus, on this basis, in *Dar al-Kufr* if a Muslim is to charge interest from a Muslim or a non-Muslim, then they would become the owner of that wealth and they would also be ordered to return it, but this does not mean that the Muslim who charges the interest and the Muslim who pays it would not be a sinner.

A Decisive Word

The details of the Islamic Law which we have presented till now, completely decimates the arguments of Maulana Manazir Ahsan Geelani. We can thus conclude and derive from the above details that:

- (1) The blood and property of all the *non-dhimmis* are not permissible, but rather the permissibility of blood and property is restricted to only those unbelievers who are enemy combatants and among the *Muharibeen* (at war). Therefore, if taking interest and conducting business through *fasid* (invalid) contracts is legitimate, then it is only with those who are at war and doing such an act is the

right of only those Muslims who are the citizens of *Dar al-Islam*, whose leader has declared a certain territory to *Dar al-Kufr* to be *Dar al-Harb* and who have entered *Dar al-Harb* by taking protection with the purpose of doing business.

- (2) Every *Dar-ul-Kufr* cannot be a *Dar al-Harb*. And if it is to be considered as a *Dar al-Harb* as per the religious law, then it has different degrees and levels and there are separate injunctions for every degree. To consider all the non-Islamic territories to be *Dar al-Harb* in one brush and to continuously enforce those injunctions which are specific to war-like conditions is not only against the spirit of the Islamic Law but also the clear instructions (of the Quran and the Hadith) and its consequences are extremely dangerous. The specifics which draw branches or off-shoots on the basis of the permissibility of lives and property can only be enforced as long as there is a situation of war with a certain *Dar al-Kufr*. Then again, all these injunctions are not related to the Muslim citizens of *Dar al-Harb* itself, but rather they are related to the citizens of *Dar al-Islam* which is at war with this *Dar al-Harb*.

In a general sense, India¹⁰⁷ has become *Dar al-Kufr* since the Muslim rule here came to an end. The period in which Shah Abdul Aziz issued a fatwa legalizing interest, in that period it was really *Dar al-Harb* for the Muslims of India because the British nation was waging a war to destroy the rule of Muslims. When its conquest was completed and the Muslims accepted its dominion, then India ceased to be *Dar al-Harb*. At one point of time, it was *Dar al-Harb* even for the Muslims of Afghanistan. In a certain era, it was a *Dar al-Harb* for the Turks too. But now it is *Dar al-Sulh* (i.e. Territory of Truce) for all the Muslim countries. Hence no person from the citizens of Muslim countries has any right to devour interest in India and conduct their

¹⁰⁷India before its partition.

business through *fasid* (invalid) contracts. However some of the tribes of the North West Frontier Province may consider it to be *Dar al-Harb* for themselves and if they are to do business here via *fasid* (invalid) contracts then as per the Hanafi Law, this act of theirs could be considered legitimate but this legitimacy is only legal. These money lenders from North West Frontier Province would never find acceptance in the sight of Allah because on the one hand they call themselves Muslim but on the other hand charge interest and indulge in the money lending business in the un-Islamic nations by conducting prohibited businesses. This would be akin to gambling, selling alcohol, pork and carcass and exactly similar to a person getting his indebted brother arrested and sending him to a civil jail while he knows that his brother has nothing in his possession (for repaying the loan) and his children would die of hunger (in case he were to be imprisoned). You could say that the money lender has a right to do so and whatever he is doing is being done within the limits of the legal legitimacy. But who could deny that this is absolutely the last boundary of the legal legitimacy and whoever exploits the outermost boundaries of the law sometimes becomes worse than the animals.

- (3) The status of the Indian Muslims can never be that for which the word “*mustamin*” (a Muslim under the protection of an un-Islamic government) is used in the language of *fiqh* (jurisprudence). The first condition for being a “*mustamin*” is that he should a citizen of *Dar al-Islam*. And the second condition is that his stay in *Dar al-Harb* should be for a small period. In the Hanafi Law, the greatest extent of time period granted to a ‘*harbi*’ (enemy combatant) ‘*mustamin*’ (under the protection of an un-Islamic government) for staying in *Dar al-Islam* is one year or a little more than that. After that, in accordance with the law of naturalization, he becomes a *dhimmi* (thus liable to pay *jizya*). Thus it could be analogically deduced that the time

period for a Muslim “*mustamin*” to stay in *Dar al-Harb* cannot be more than a year or two. The Islamic Shariah which is comparatively quite willing to gather Muslims in *Dar al-Islam* and award the unbelievers the status of *dhimmis*, could never allow anyone to make *Dar al-Harb* one’s country and produce generation after generation in a *Dar al-Harb* who keep spending their lives there as a ‘*mustamin*’ (under the protection of an un-Islamic government). Now such a thing is not legitimate for an individual, then how could it be permissible for such a huge population of Muslims in their millions to spend their lives in the status of ‘*mustamin*’ for centuries together. How can these Indian Muslims be allowed to take advantage of that permission which is temporarily granted to dispersed individuals in a very special situation to meet the war requirements. It would be totally incorrect to impose upon themselves all those constraints which a ‘*mustamim*’ inherits and is forced to follow the law of the unbelievers temporarily, which frees him from the obligations of following the Islamic Law.

- (4) The ‘correct legal position of the Muslims of India is that they are a community that is under the custody of the unbelievers. Their territory which was once *Dar al-Islam* has now become *Dar al-Kufr* but the vestiges of *Dar al-Islam* still persist. Their duty is that either they move to a *Dar al-Islam* or if they cannot do so, then they must strictly preserve whatever Islamic vestiges are there in this country and employ all possible strategies to remake this country a *Dar al-Islam*. Every breath they take living under the law of *Kufr* (i.e. Unbelief) is a sin (if they do not strive to propagate and establish Islam).....now would you agree to increase this sin by destroying the remaining Islamic vestiges?

Tarjuman-ul-Quran,
Ramadan 55 AH; Zil Qa’dah 55 AH.
Dec. 1936 -Feb. 1937